

[Working papers 9

[Linguistic Legislation and Normalization Process:
The Catalan Case in Spain

Agustí Pou Pujolràs

Year: 2002

mercator
dret i legislació lingüística

ciemen WORKING PAPERS

Mercator (www.mercator-central.org) is a research programme and an information and documentation service in the field of the so-called minority languages in Europe, jointly developed by three centres which deal with different scopes: education, mass media and linguistic rights and legislation.

The Mercator-Working Papers intend to offer users of the Mercator network a series of research works or short articles in progress concerning linguistic rights, legislation and policies, mainly focusing on the use of minority languages in public life spheres.

Publisher

CIEMEN (Escarré International Centre for Ethnic Minorities and Nations)
Rocafort 242, bis
08029 BARCELONA
(CATALUNYA)
Tel. (+34.93) 444 38 00
Fax (+34.93) 444 38 09
mercator@ciemen.org
www.ciemen.org/mercator

Editorial staff

Team of the Mercator-Legislation Programme:
Aureli Argemí
Virgínia Unamuno
Sergi Vilaró

Note

Correspondence must be sent to the CIEMEN (address above). You can send us -by post, e-mail or fax- all documents which you consider that should be published in the working-paper collection.

The opinions, criteria and terminology used or expressed in published collaborations are not necessarily shared by CIEMEN

ISSN 1133-3928

© Agustí Pou Pujolràs, 2002

Translation: Sergi Vilaró (Mercator-Legislation Programme)
With the collaboration of Beatrice Krayenbühl Gusi

With the support of



[Linguistic Legislation and Normalization Process: The Catalan Case in Spain^{*}

Agustí Pou Pujolràs
Program on Linguistic Normalization in the Judicial Field
Department of Justice, Generalitat de Catalunya

1. Introduction	1
2. The legal framework in which the linguistic normalization of Catalan is being developed	2
2.1 Procedural and substantive limitations to normalization	3
2.2. Competence limitations	7
3. Basic principles acting as the grounds for linguistic law in Catalonia: limits and possibilities	8
3.1. Official language	8
3.2. Linguistic rights	12
3.3. Own language	13
4. Another instance as a conclusion	15

1. Introduction

Within any type of linguistic normalization policy, the relationship established between the set of rules governing the use of the languages coexisting in a territory and their real use by both public powers and citizens, becomes a relevant issue in order to appraise the success of the results achieved, as well as for the planning of new strategies. An appraisal of the incidence of language legislation as regards the re-establishment and increase of

^{*} This work comes basically from a lecture I gave on behalf of CIEMEN and Mercator in the workshop: *Catalan: Looking at the Future*, organized by the University of Barcelona and CIEMEN-Mercator, which was held on April 13, 2000.

the use of Catalan, by means of accurate sectorial data, would doubtlessly become an interesting and necessary study.

However, this paper does not intend to examine the impact of the regulatory legislation of Catalan with regard to usage –rather related to sociolinguistics- but only to draft the juridical concepts used as the basis for linguistic legislation in Catalonia, its potential, its limits and contradictions, while providing specific cases. This paper aims to hint at some guidelines about how law can be useful in increasing the use of Catalan or, similarly, to become an instrument with regard to its normalization. Prior to this, I endorse two premises that I quote from two renowned authors. The first of them, a rather discouraging though certain one, was formulated some time ago by Albert Rossich in a popular book which ended with a reference to Catalan: “We have recovered the prestige, but now we are lacking what we always had: the social use”¹. The second one, by Joan Martí: “the situation of a language cannot only be solved by means of laws, neither positively nor negatively. What matters above all is the will and the attitudes of the peoples, and the responsibility of the ruling class that represents them as regards their aspirations”². In other words, it must be recognized from the very beginning that if the language’s social use declines, as is the case we are dealing with, laws are only one more remedy for its solution, a remedy amongst others and probably not the most important one.

2. The legal framework in which the linguistic normalization of Catalan is being developed

To start with, I would however like to set forth a general reflection about the framework in which Catalan and its normalization is placed, and where it is likely to be placed in the future. The Constitution, in its Article 1, defines the Spanish State as a democratic state of law; Article 2 ensures nationalities and regions the right to self-government (autonomy). As far as we are

¹ «El català àmbits de prestigi i àmbits d’ús». In: PRATS, Modest; RAFANELL, August; ROSSICH, Albert. *El futur de la llengua catalana*. 7th ed. Barcelona. Empúries, 1995, p. 101.

² «Perspectiva de futur de la llengua catalana» In: *II Jornades de sociolingüística: l’ús social i el futur de la llengua catalana*. Alcoi: Gabinet Municipal de Normalització Lingüística. Ajuntament d’Alcoi, 1994, p. 34.

concerned here, the type of government and the type of state established by the Constitution have the following entailments implications:

2.1. Procedural and substantive limitations to normalization

The linguistic normalization and the recovery of Catalan is obviously going on through democratic paths, by means of rules approved in the parliaments -in this case and in general, in the autonomous (regional) ones-. The regulatory norms of development must adjust to these rules and, at the most, courts control the legal and constitutional adequateness of linguistic legislation. This is, needless to say, an obvious issue, though it is interesting to highlight those, to a certain extent, special features which have both defined the elaboration and the application and the jurisdictional control of linguistic legislation.

First of all, consensus has been sought in the making of linguistic (political) normalization laws, which has been generally achieved. This is an important fact as it indicates that the political-parliamentarian tradition in Catalonia as regards this question has benefited from a basic agreement between the diverse political forces³.

Such a factor –a positive one- has also entailed an important refusal to institutionalise more precisely defined or blunt instruments. What is more, the previously mentioned basic agreement is developed within a rather limited framework, being the materialisation of and the development from the Constitution, basically its Article 3, which establishes the following:

- (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 languages of Spain will also be official in their respective autonomous communities, in accordance with their statutes.
- (3) The richness of the linguistic modalities of Spain is a cultural patrimony which will be the object of special respect and protection.

And article 3 of the Statute of Autonomy:

³ See Jordi Agelaguet's book, *El procés d'elaboració de la Llei de política lingüística*. Barcelona: Editorial Mediterrània, 1998.

1. The own language of Catalonia is Catalan.
2. Catalan is the official language of Catalonia, as Castilian is the official language of the whole of the Spanish State.
3. The Generalitat shall guarantee normal and official use of both languages, adopting all measures necessary to ensure they are known, and creating those conditions which shall make possible their full equality with regard to the duties and rights of the citizens of Catalonia.
4. The speech of the Valley of Aran shall be taught and shall receive special respect and protection.

These are the widest juridical boundaries that the debate allows provided that both the Constitution and the Statute constitute a limitation to policy makers' actions. However, these are probably too narrow boundaries with regard to a question having so many implications as is the normalization of Catalan, and mainly as regards one of its principal manifestations, the revitalization of its social use. In order to enlighten the narrow space we are referring to, let me take on again the same aforementioned work in which Modest Prats points out with precision that "(the) legislation concerning the Catalan language, made concrete in the Constitution and the Statute, and from which it is developed, presents some positive aspects –specially if we compare it to that of previous situations. Because of this, the presence of Catalan at school has been guaranteed as well as a consolidated publication of books, the existence of some newspapers in Catalan, the access of Catalan in radio and television, and a certain public and official presence of the language. In short, the democratic transition stopped the process towards the total extinction towards which the language was headed and which would have been inexorably effective had the dictator endured a few more years, making thus possible its recuperation in some important aspects. It would seem unfair not to recognize this fact, though I consider it would be wrong not to denounce as well its limitations, ambiguities, insufficiencies and contradictions"⁴.

In this respect, for instance, one should be aware of the fact that in the Law of Linguistic Policy no reference has been made –at least on a

⁴ «Meditació ignasiana sobre la normalització lingüística». In: PRATS, Modest; RAFANELL, August; ROSSICH, Albert. *El futur de la llengua catalana*. 7th ed. Barcelona: Empúries, 1995, p. 17.

general basis- to the so-called linguistic availability, the duty to know Catalan or a certain sanctioning basis, as has been set up in other countries of our cultural and juridical environs that we usually take as references⁵.

Secondly, such pactism has also been transferred to the application of the rules. In many cases we could refer to an agreed or consensual application between the parties involved. In this respect, one must only check those collaboration covenants subscribed by the Generalitat (or the different bodies partially or totally depending on it) and other organizations (professional bodies, trade associations, other State institutions, etc.)⁶. This is at the very least a particular case of legislation development, basically pursuing the involvement of the widest range of the population or, to put it more bluntly, of the several social agents as regards normalization. Let us however notice that this fact reveals as well the difficulties that the Law's regulatory development undergoes. One should only mention, for instance, the controversy around the so-called "cinema decree", which has finally concluded with a rather deceiving outcome.

Thirdly, the linguistic policy's jurisdictional control has also been a singular one. Initially, the High Court's jurisprudence in this respect was specially reluctant with regard to linguistic legislation. One should recall for instance the rejection made by this jurisdictional body regarding the requirement to have a knowledge of the autonomous community's own language when applying for a public post, a position which was only changed –though with certain reserves- after the Constitutional Court Ruling 46/1991, of February 28, which admitted such possibility by declaring the provisions that the Act on the Catalan Public Function contained in this respect constitutional. Another example would be the question concerning unconstitutionality put forward by the High Court before the Constitutional Court, in which a clearly contrary line of argument was put forward as regards the use of Catalan as the educational vehicular language. Such position was subsequently rejected by the Constitutional Court in its Ruling 337/1994 of December 23.

⁵ About the intervention in the socio-economic field in relation to surrounding countries, one may consult the excellent work by Antoni Milian Massana, *Público y privado en la normalización lingüística*. Barcelona: Atelier. Institut d'Estudis Autònoms, 2000.

⁶ See the collection of agreements and pacts published in each issue of the journal *Llengua i Ús*.

A symptomatic and at the same time revealing element: several rulings refer to Catalan as the “peculiar” language of the community - “vernacular”, “singular”, “specific”, whereas adjectives such as “common” or “general” are used for Castilian. It should be pointed out that none of these denominations is considered legal. Until relatively recent times, very few of the High Court’s rulings on matters concerning the legal framework of languages and linguistic rights mentioned such essential norms concerning this issue as are the statutes of autonomy or linguistic normalization laws⁷; as a matter of fact, they are the main rules to be taken into account in reasoning; neither do they mentioned the concept of own language, inasmuch as it derives directly from the statutes of autonomy.

All the previous information is intended to indicate that part of the conflict arisen after the application of the linguistic policy rapidly reaches court procedures, either through ordinary jurisdiction or by means of the constitutional one. The success of a given policy also depends, at least partly, on the interpretation that courts may make with regard to the normative set to be applied. In order to illustrate this a bit further, let us finally take one case that could be considered of a relative practical importance, though it is quite relevant from a symbolic and emotional point of view: the rulings relative to the declaration of Catalan as the official language of the Valencian universities; the specific meaning of it is the declaration of Valencian as being “academically Catalan”. After the withdrawal of this clause by the Valencian Autonomous Government by virtue of its capacity to monitor the legality of university statutes, and having transferred the conflict to the judicial sphere, a literal interpretation of the Statute of the Valencian Community allowed jurisdictional bodies to consider that the declaration of “Valencian, as being academically Catalan” the official language of these universities went against the statutes (High Court’s Ruling of November 20, 1992), provided that the Statute itself did not envisage such definition. Fortunately, the Constitutional Court rectified this interpretation, though protected by the autonomy that universities enjoy (CCR 75/1997, of April 21)⁸. The catalogue of designations used by the High Court when naming the communities’ official languages certainly

⁷ You may consult the several warnings concerning this question in the chronicle of jurisprudence within the journal *Llengua i Dret*

⁸ PONS PARERA, Eva. «Autonomia universitària i denominació de la llengua pròpia de la Comunitat Valenciana (comment on the Constitutional Court’s Ruling 75/1997, of April 21) ». *Autonomies*, nr. 23, 1998, pp. 193-212.

contrasts with the argumentation used in this hypothesis, sticking to the literal interpretation of the Statute's text.

2.2. Competence limitations

The second basic -and even defining- element of the Catalan model of linguistic normalization is the circumstance that it occurs in a multi-compound state, in which competences are shared between the state and the autonomous authorities. Such a situation substantially conditions all the initiatives undertaken by institutions in Catalonia. As a matter of fact, and although the High Court has recognized the autonomous community's competences in matters described as "scope of co-officiality", "contents inherent to the concept of officiality" or "linguistic normalization" (CCR 82/1986, fj.5 and 6; 123/1988, fj.5; 56/1990, fj. 40; 337/1994, 74/1989, fj.2; or 87/1997, fj.4), the truth is that in all matters on which the state has powers, the state is in charge of linguistic "self-organization". Therefore, the autonomous legislation may only, in a mediate way, fall upon those matters on which the state has competences. In short, the normalizing policy established by the Catalan laws is, in spite of any interpretation, limited by its own competential ceiling⁹.

Let us give an example (apart from those I will refer to later on): inscriptions in the Registry Office. These, according to the Rules of the Registry Office, must be done in Castilian (Art. 298.6 of the Rules of the Registry Office). Despite several judicial proceedings in this respect, which have crystallized in resolutions by the High and Constitutional Courts respectively (HCR of January 26, 1993; CT Interlocutory 311/1993, of October 25), as well as recently by the High Court of Justice of Catalonia (HCJCR 1166/1999, of November 26), despite a relatively little used habit among magistrates to write in Catalan in municipal registry offices -notwithstanding what should be recommendable through common sense-, the fact is that provided it is a state register, inscriptions are and must be

⁹ On this question see the works by Miguel Ángel Aparicio and Iñaki Agirreazkuenaga, *Jornades sobre la Llei de política lingüística. Barcelona, 19 i 20 de febrer de 1998*. Barcelona: Institut d'Estudis Autònoms, 1999, pp. 51-58 and 135-151, respectively.

written in the language established by its holder, that is Castilian¹⁰. The distribution of competences radically conditions, or limits, the normalization policy.

Due to all this, and given the current framework of competence distribution, the linguistic policy in a broad sense is not only planned by the Generalitat but also, and in a remarkable way, by the state (Government and Parliamentary Assembly) and the judiciary itself.

3. Basic principles acting as the grounds for linguistic law in Catalonia: limits and possibilities

Although one could list in a more or less prolix way a whole set of notions that lay the grounds for the linguistic law in Catalonia, and in order not to be excessively wordy, let us group it all around three essential concepts, explicitly expressed in the Catalan Law of Linguistic Policy¹¹.

3.1 Official language

Catalan is, alongside Castilian, an official language in Catalonia. According to the traditional definition of the word, established by the HCR 82/1986, of June 26 (following the Judgement by the Advisory Council 35/1982), “a language is official, regardless of its reality and its weight as a social phenomenon, when it becomes recognized by its public powers as a normal means within and between them, and in their relations with citizens, with full legal validity and effects”. Officiality would thus be, as regards the Catalan case, a rule of linguistic minimums. Important minimums, though minimums anyway. The following consequences can be subsequently set up¹²:

¹⁰ The obligatory nature concerning the inscriptions in the register office in Castilian has originated an increasingly growing protest movement amongst local bodies and organizations.

¹¹ Find a specific and exhaustive study on this Law in: *Estudis jurídics sobre la Llei de política lingüística*. Madrid-Barcelona: Marcial Pons. Institut d'Estudis Autònoms, 1987, pp. 111-145.

¹² In relation to this question, one must quote Antoni Milian's work “Ordenament lingüístic”. In: *Comentaris a l'Estatut d'Autonomia de Catalunya*. Barcelona: Institut d'Estudis Autònoms, 1988, p. 177. An obligatory key reference is provided by FONT, Antoni; MIRAMBELL, Antoni; BADOSA, Ferran. «Els conceptes jurídics fonamentals en matèria de

- The impossibility to be ignored by public powers and, consequently, the citizen's right to address these in the official language.
- A sort of presumption of knowledge on the part of citizens. With regard to Castilian, the Constitution itself refers to 'the duty to know it'. It is worth saying that it does not prohibit statutes of autonomy to contain such presumption. Whatever is not envisaged by the Constitution does not mean it is prohibited.
- Certain rights referring to the public powers' obligation to attend to the citizens in their language of choice (CTR 87/1997, of April 24, hints at this)
- The duty to teach the language within the study plans.

We may ask ourselves whether the current state of the linguistic rules satisfies the double officiality. Are Catalan and Castilian really equal as regards the definition of their officiality? We acknowledge that the answer, at least in a good number of areas, is a negative one. We could state that both are official languages, though Castilian is more official than Catalan. Whereas Castilian is "official", Catalan would be "co-official" (an adjective broadly used in constitutional jurisprudence). Let us give some examples that have also been dealt with in the courts.

a) *The Trade Register*. The Rules of the Trade Register establish that all inscriptions in the register must be carried out in Castilian (Art. 36). Therefore, whenever a citizen wishes to enter a record in this register and submits a document in Catalan, it will be translated into Castilian. Ruling 87/1997, of April 24, has backed the constitutional correction of such a rule. As Puig Salellas¹³ has argued, this implies a clear de-officialization of Catalan as it denies the citizen's right that a public register includes an inscription in the language of his/her choice. Besides, problems related to legal certainty arise. With such good will, what company would find it worthwhile to have documentation to be submitted to the register, in Catalan? The scope of such "de-officialization", apart from its inherent

dret lingüístic a Catalunya». In: *Segon Congrés Internacional de la Llengua Catalana. VI. Àrea 5. Llengua i Dret*. Barcelona: Institut d'Estudis Autònoms, 1987, pp. 111-145.

¹³ «Otro ámbito de desoficialización de la lengua catalana». *Revista Jurídica de Catalunya*, 1998, nr. 1.

inequality, directly entails a negative effect on the spread of Catalan within the business world.

b) *Patent and Trade Mark Office*. Being a state body, the law requires all applications for register and documentation submitted to be presented in Castilian. The Constitutional Court in its 103/1999 Ruling, of June 3, observes again that this is perfectly constitutional in accordance with the fact that it is a state central body. The connexion between centralized bodies and the obligatory use of Castilian generates again areas where the officiality of Catalan is in a rather precarious situation.

c) *Justice Administration*. One could make the same remarks when dealing with declarations made by a citizen in his/her relations with the Justice Administration. Whenever an official takes them in Castilian for the record (being protected by Article 231.2 of the Statutory Law of the Judicial Power), the affirmant must ratify him/herself and sign a declaration in a language different from the one he/she has used. The Constitutional Court has also considered such a circumstance a fully legal one (CT Interlocutory 88/1999, of April 12). Wouldn't officiality thus mean the right to use one's own language within the Justice Administration? We are therefore dealing with a new undermining of Catalan as an official language.

In this same respect, any document which by means of bringing an action before the court is to take effect within a central jurisdictional body of the state must be translated, thus entailing the corresponding unavoidable delay. Just imagine how big the administrative enquiry can get to be (reports, administrative resolutions, etc.). Both the High Court and the Constitutional one send back (as jurisdictionally established) all documentation that is not written in Castilian. One can therefore verify the lack of support for the legal-procedural activity in Catalan. The minorization of officiality is reflected to the detriment of normalization¹⁴.

The examples above and many others to which we do not refer reveal that one could imply from the current normative and jurisprudential

¹⁴ In any case, these rules and this practice will have to be specified by the enforcement in Spain of the European Charter for Regional or Minority Languages, published in the *Boletín Oficial del Estado* on September 15, 2001. However, the internal consequences so far have been practically void.

state of affairs -even as regards some other fields- that there exist a first class officiality and a second class one. The respect for and the protection of Catalan are generally set aside when this depends on the state.

According to Prof. Antoni Mirambell¹⁵, and gathering the experience from the cases described above, the features defining the officiality of Catalan should be the following:

a) There should be a unique officiality value. One language should not be more official than another.

b) The official language must be a normal means of relation between the public authorities and the citizens.

c) The validity and effectiveness of either public or private legal proceedings and businesses carried out in the respective territorial scope. But also the recognition of extraterritorial effects when the proceeding has implications beyond the autonomous community due to the state's centralist structure.

d) The right to use the official language in both the public and private spheres.

e) The general presumption concerning the knowledge of the official language, except for specific cases which should be certified (for example, a possible lack of proper defence in a trial). It should be noted, however, that the Catalan Act on Linguistic Policy does not envisage this duty and that the Generalitat's Advisory Council's rulings are themselves negative in this respect (203/1997 Ruling).

With such officiality features we might not talk about co-officiality but about double officiality, that is to say, an equal officiality for both languages. On the other hand, one of the arguments to be exploited in my opinion in order to achieve the full recognition of officiality would be the recognition of Catalan within the state central institutions provided that these are –willy-nilly or not- central ones with regard to Catalonia. Accordingly, Catalan cannot be fully official if it is not a language recognized by the Parliamentary Assembly (not only

¹⁵ «Catalan as Catalonia's own language». *Estudis sobre la Llei de política lingüística*. Barcelona and Madrid: Institut d'estudis Autònoms, Marcial Pons, 1999, p. 65.

on one single day each year, as happens at present), State Administration and the central bodies of the judicial powers. There is no doubt that this would be the most consistent way in a plurilingual state¹⁶.

3.2. Linguistic rights

The Act on Linguistic Policy, in its development of the officiality concept, deploys a range of rights for citizens (art. 4.1 LLP). We will not get into details here but only mention them.

a) The right to know the two official languages.

b) The right to communicate in any of the two official languages in both the public and the private sphere.

c) The right to be attended. In this case it should be proved whether the right to be attended includes the right to be replied to in the language used by the citizen. This will to a large extent depend on the sectorial regulation establishing this right. Accordingly, Article 36 of the Law 30/1992, on the legal system of public administrations and ordinary administrative procedures, sets up this right to be replied to in the language used by the citizen.

d) Non-discrimination on the grounds of language. However, this right cannot be understood in the sense that positive discrimination measures should not be adopted towards Catalan. For instance, subsidies for cinematography.

Using this as a starting point, the Act on Linguistic Policy itself plus other sectorial legislations recognize different linguistic rights specified in some particular spheres. In any case, one must bear in mind that in the Spanish State linguistic rights are not fundamental rights *a priori*, although one fundamental right may possibly have linguistic contents (jurisprudentially, the equality principle and the non-discrimination deriving from article 14 of the Constitution have been

¹⁶ See VERNET, Jaume. «Principios constitucionales y derechos en un estado plurilingüe». In: DE LUCAS, Javier (dir.). *Derechos de las minorías en una sociedad multicultural*. Madrid: Consejo general del Poder Judicial, 1998.

dealt with, as well as the access to public posts and functions in equal conditions, from Article 23 of the same text)¹⁷.

3.3 Own language

Independently of the theoretical basis upon which the legislative policy should be based as regards linguistic normalization (in this respect, Professor Branchadell's contributions¹⁸ are specially interesting and suggesting), the fact is that the development of the Catalan Statute of Autonomy, firstly by means of the Act on Linguistic Normalization (1983) and afterwards through the new Act on Linguistic Policy (1998), is in both cases directed (though it does not mean that all possibilities are exhausted) to the exploitation of the concept of "own language" contained in article 3 of the Statute.

According to the law's preamble "the concept of own language applied to the Catalan language obliges the central state authorities and institutions in Catalonia to respect it, to use it as a general rule and promote its public use at all levels". The consequence arising from the fact of laying down Catalan as the own language is the general use to be exercised by public institutions and authorities, as well as the obligation to promote and protect it; these are, in short, the two basic instruments for linguistic normalization and which justify it in legal terms.

Article 2 of the Act on Linguistic Policy delimits the concept. Catalan, as the own language of Catalonia, is:

a) The language of all institutions in Catalonia, and particularly of the Administration of the Generalitat, local authorities and public corporations, companies and public services, institutional media, education and toponymy. This is practically equivalent to a declaration of the exclusivity of Catalan in all these fields, apart from the exceptions set out for justified reasons by development regulations, while always respecting individual linguistic rights.

¹⁷ MILIAN MASSANA, Antoni. «Derechos lingüísticos y derechos fundamentales en España». *Revista Vasca de Administración Pública*, nr. 30, 1991, pp. 69-103.

¹⁸ You may consult this critical vision in his work *La normalitat improbable*. Barcelona. Empúries, 1996.

b) The language preferentially used by the State Administration in Catalonia as set down by it, for the other institutions and, generally, for companies and entities offering services to the public. This Act therefore establishes the preferential use of Catalan as regards the public field of state competence and private institutions providing public services. The differentiation between both fields is basically founded on the avoidance of power extra-limitations and therefore it states “in the manner that it lays down”. A sort of basic rule becomes established whereas the application is left to the state.

The concept of “own language” has thus become the basis on which preferential usages within the new act are articulated, with expressions regarding the use of Catalan such as “preferentially”, “normally”, “at least”, “minimum”. Linguistic normalization, being also grounded on the officiality principle as a basic instrument, is mainly based on the declaration of the own language. The concept certainly includes possibilities which, provided the lack of other instruments, need to be explored. However, it should not be misapplied. The use of the juridical concept “own language” –stigmatised by some for considering it to be a conservative, old-fashioned nationalistic or not so liberal one, probably ignoring the reasons that have lead us to make use of it- responds to a basic failure, that is, in the effective equality between Catalan and Castilian as official languages. As long as the state does not accept Catalan as an equally official language as Castilian is (as pointed out previously), protecting it as a normal language in Catalonia and taking it on in central institutions, or as long as Catalan is not declared the only official language, the juridical devices allowing the restitution process of Catalan as the country’s own language will have to be pursued.

4. Another instance as a conclusion

We have tried in this paper to briefly describe the potential of linguistic rights’ concepts, particularly those crystallized in the Act on Linguistic Policy, with a view to providing devices to pave the way towards the normalization of Catalan. Nevertheless, we have also seen the limits, disarrangements and contradictions that one can find within this process. In order to illustrate how all this is manifested in a specific case, which will at the same time be useful as a

conclusion, we will describe the situation in a field in which the use of Catalan is rather poor, and in relation to which harsh controversies concerning linguistic issues have recently arisen. We will talk about the appraisal of the knowledge of Catalan among the personnel working for the Justice Administration.

If we take a look at the status of such civil service we will find out that the linguistic profile of the different bodies that integrate it is absolutely heterogeneous, to the extent that it is even contradictory. Thus, judges are worthy of one point in the officials' scale when they have an elementary level (B level) of Catalan language. Senior judges are given a bit more. If they have a higher qualification, this does not benefit them beyond a further knowledge of the language. Court officers, responsible for expediting the court action, are not provided with any points for their knowledge of Catalan: the regulation awarding up this merit for them was withdrawn some time ago. Neither are public prosecutors given any merit for their knowledge of Catalan; temporary public prosecutors were, though the Ministry of Justice did repeal this merit. Obtaining a qualification in Catalan does not entail any merit either for the legal representatives of the state. On the contrary, those of the Generalitat must have the medium level of knowledge. Forensic surgeons have 2, 4 or 6 points when applying for a post in accordance with the level –elementary, medium or high- they have achieved. Such is also the situation of 1st, 2nd and 3rd court clerks (personnel working in administrative tasks in court offices), except when working temporarily: then, they may be required to have an elementary level if they are auxiliaries, a medium one if they are officers or forensic, unlike 3rd court clerks who, despite performing important functions directly before the public, are not required to have a language level at all. In a different situation we find psychologists or court appraisers, who must have a C level (medium) for they are personnel at the service of the Justice Administration though depending on the Autonomous Administration. Beyond their moral duty, lawyers and solicitors are not obliged to understand Catalan either; although they may have made their professional career in Catalonia. Should they understand it, then they be better be careful not to cause a situation of defencelessness for the person they represent or defend.

We would thus be dealing with a paradoxical situation: a lawyer of the Generalitat is allowed to present a document in Catalan (to which

he/she is obliged as an officer of the Autonomous Administration), whereas the courts secretary or the judge him/herself must not understand him or her since they were not required to do so when they applied for the post. A citizen is able to address a judicial officer but if he/she does not understand him/her, the former must take on at its own risk and good fortune the defence of the officiality of Catalan. Obviously enough, all this mess strengthens the confusion and strongly restrains the implantation of Catalan.

The situation so far described should not be taken as the generalized one but as an example regarding the juridical conditions in which normalization is being developed, that is with a gap between an appropriate and consistent planning and the juridical reality -which is not only non-neutral but also a hindrance. However, it is also certain that normalization is a process and as such it generates contradictions between declining situations and other emerging ones. We should then find out whether the dynamics concerning the use of the Catalan language are emerging or rather declining in spite of everything. What is sure, though, is that the future of Catalan does not only depend on the fact that Catalan speakers have rights; a fairly normal arena where they can be exercised must be achieved.

[Col·lecció “Documents de Treball”- *Mercator-Drets i Legislació Lingüística*

- 1- La promoció de les llengües minoritàries a la Federació Russa i la prevenció de conflictes interètnics: el cas de Calmúquia- *Marc Leprêtre*
- 2- Els principals conceptes en el reconeixement dels drets lingüístics als estats europeus - *Neus Oliveras*
- 3- L'estatus polític de la llengua romaní a Europa- *Peter Bakker & Marcia Rooker*
- 4- La tutela jurídica des lenghis retoromancs cun particulâr riferiment al câs furlan- *William Cisilino* (en friulà)
- 5- Llengües i institucions a la Unió Europea- *Manuel Alcaraz Ramos*
- 6- Les llengües minoritàries de la Federació Russa- *Eduardo Ruiz Vieytes*
- 7- European linguistic diversity- for whom? The cases of Finland and Sweden- *Jarmo Lainio* (en anglès)
- 8- La ratificació de l'estat espanyol a la Carta europea de llengües regionals o minoritàries- *Santiago Castellà*
- 9- Legislació lingüística i procés de normalització: el cas català a l'Estat espanyol - *Agustí Pou*

[“Working Papers” Collection- *Mercator-Linguistic Rights and Legislation*

- 1- The promotion of minority languages in the Russian Federation and the prevention of interethnic conflicts: the case of Kalmykia- *Marc Leprêtre*
- 2- The main concepts in the recognition of linguistic rights in European states - *Neus Oliveras*
- 3- The main status of the Romani language in Europe- *Peter Bakker & Marcia Rooker*
- 4- The juridical defence of Rhaeto-Romansh languages, with particular reference to the Friulan case- *William Cisilino*
- 5- Languages and institutions in the European Union- *Manuel Alcaraz Ramos*
- 6- Minority languages of the Russian Federation- *Eduardo Ruiz Vieytes*
- 7- European linguistic diversity- for whom? The cases of Finland and Sweden- *Jarmo Lainio*
- 8- The Ratification of Spain of the European Charter for Regional or Minority Languages - *Santiago Castellà*
- 9- Linguistic Legislation and Normalization Process: The Catalan Case in Spain – *Agustí Pou*

Podeu consultar i obtenir la col·lecció a

<http://www.ciemen.org/mercator/index.htm>

You can consult and obtain the collection in

<http://www.ciemen.org/mercator/index-gb.htm>

* Disponible en català “La diversitat lingüística europea. Per a qui? Els casos de Finlàndia i Suècia”, a El dret a la diversitat lingüística (2002), Col·lecció CIEMEN-Drets lingüístics, Ed. Mediterrània, Barcelona