

**Call for input to the report of the Special Rapporteur on minority issues to the UN General Assembly on the institutional arrangements of States that enable minority rights to flourish
By Plataforma per la Llengua**

1. Do you consider the interests of persons belonging to minority groups appropriately taken into account in your country?

Plataforma per la Llengua believes Spanish legislation is wholly inadequate regarding the recognition of minorities and their rights. As a matter of fact, it fails to recognise them at all. Refusal to recognise minorities is underpinned by an official nationalistic narrative which contends that Spain is one single nation with a “common” language. As far as there is cultural pluralism, it is so “complex” that it is not possible to distinguish a “majority as such, existing as a discrete and separate entity from the minorities”, since “the majority comprises these so-called minorities, in addition to many others”. According to this view, there is only one Spanish community and then individuals with “multiple identities”¹.

The denial of the very existence of linguistic, national, and ethnic minorities is being used to uphold a legal system that denies them their rights. The Spanish Constitution declares the language of the national and linguistic majority, Spanish, to be the State’s official Language, imposing the duty to know it on all citizens. In effect, this is an obligation for national and linguistic minorities to learn the majority language and, as the Spanish Constitutional Court has ruled, it is meant as a

¹ Report of the Special Rapporteur on minority issues on his visit to Spain, Comments by the State (2020): <https://documents.un.org/doc/undoc/gen/g20/064/20/pdf/g2006420.pdf?token=DTJw9kLQ0VHAqZVUpw&fe=true>

“counterpoint to the power of the public administration to use [Spanish] as a normal means of communication with citizens, without the latter being able to demand the use of another [language]”². This constitutional provision serves as the cornerstone of a whole system of discriminatory legislation that creates an uneven playing field against the preservation of minority languages, especially at a time of increased international integration and migration.

2. Are there institutional arrangements that guarantee (or facilitate) effective political representation of persons belonging to minorities?

The Spanish State is divided into Autonomous Communities, the first sub-national level of political and administrative. They were created in accordance with the Spanish Constitution of 1978 to guarantee limited autonomy to the nationalities and regions conforming the State. Catalan is a language spoken in the autonomous communities of Aragon (in the area bordering Catalonia), the Balearic Islands, Catalonia, Valencia, and Murcia (in the area bordering Valencia). In Valencia and Murcia, the language is known as Valencian. Of these 5, only Catalonia, the Balearic Islands and Valencia recognise Catalan (or Valencian) as an official language in their Statute of Autonomy (the regional Constitution of the Autonomous Community). This does not take into account the existence of linguistic communities that go beyond the geographical and administrative borders of an Autonomous Community. The result is a lack of legal coherence and numerous Statutes of Autonomy that prevent the development of unified political structures.

Furthermore, the upper house of the Spanish Parliament, the Senate, is supposed to represent these Autonomous Communities. However, most of these are just subdivisions of historical Castile, and thus represent populations that are part of

² Constitutional Court Ruling 31/2010, point 14:

<https://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/6670>

the national majority. Furthermore, because of internal migration and inequality regarding cultural and linguistic rights, many inhabitants of Autonomous Communities in territories historically belonging to minorities are not members of said minorities.

Therefore, there is no direct and unambiguous representation of national minorities in statewide institutions.

3. Are there any minority issues isolated from (or not subject to) the State authorities' decisions (including Parliament)?

The Spanish Constitution allows regional governments to declare the languages traditionally spoken in their respective territories as official. However, the Constitution does not mention minorities by name, nor does it acknowledge any minority rights as such. In fact, speakers of minority languages cease to have any specific language rights outside their own territory or when dealing with authorities that are not based there. The Spanish legal system doesn't recognise linguistic minorities and their individual members, it just allows the treatment of some languages as official in particular instances, as if it were a matter of public policy. In this sense, regional officialdom of languages other than Spanish can be compared to a state commitment to promoting the arts. Because it is treated as a matter of public policy, rather than minority rights, speakers can only expect to use the language in specific situations that have little to do with their needs. That is, when the administrative bodies they are dealing with operate from particular territories. There are many institutions with jurisdiction over the Catalan linguistic minority which do not use Catalan and do not accept its use by citizens or residents addressing them: ministries deny scholarships to candidates that use Catalan in their applications, state-wide appellate courts generally don't accept the use of Catalan in judicial proceedings, some departments of the tax authority refuse to answer questions in Catalan, etc. In effect, the right of citizens to use Catalan with

a particular administrative body depends on something as arbitrary as the chosen location for its headquarters.

4. Are there institutional arrangements and/or political practices that de facto exclude persons belonging to minorities from effective participation in decisions at the national – and, where appropriate, regional – level concerning the minority to which they belong?

There have been legal limitations imposed by courts' actions that are becoming increasingly restrictive concerning the regulations for the promotion of the Catalan language. In general, the path taken is not directly the annulment of norms, but a reinterpretation of them, making them say things that were not intended by the legislator, thereby usurping legislative powers. We can highlight the following:

- There can be only a duty to know Spanish, but not Catalan: STC 31/2010³.
- The autonomous and local administrations cannot establish preferential functioning for the Catalan language: STC 31/2010.
- The film promotion legislation cannot establish a minimum quota of 50% of Catalan presence in cinemas⁴; the Spanish TC determines that the proportionate figure is 25%⁵.
- All official languages must be a medium of instruction (STC 31/2010). If less than 25% of teaching time is devoted to a given language, it is not a medium of instruction. Thus, Spanish must be used as a medium of instruction for at least 25% of the time.
- The regions cannot establish that immigrants must first learn the language of the territory and not Spanish. On the other hand, Spanish is the only language that allows them to obtain Spanish nationality, therefore, it is

³ Text of the judgement: <https://hj.tribunalconstitucional.es/ca/Resolucion/Show/6670>

⁴ Law 20/2010 Parliament of Catalonia, Article 18, page 45:
<https://www.parlament.cat/document/nom/TL121.pdf>

⁵ Ruling 89/2017 of the Constitutional Court. Legal Basis 13:
https://www.boe.es/diario_boe/txt.php?id=BOE-A-2017-8474

implied that they must learn Spanish first and that their knowledge of Catalan is dispensable⁶.

- All attempts to establish a law stating that consumers have the right to express themselves in Catalan have been interpreted by the courts as generic legislation yet to be developed⁷.
- There is a proliferation of rules that impose the use of the Spanish language in applications for grants and subsidies, as well as in the applications for awards⁸. This is also the case in other central institutions, such as the Government, its ministries, the Congress of Deputies, and autonomous bodies, including the Bank of Spain. For example, in 2021, the aforementioned institutions issued a total of 98 regulations that privilege the Spanish language and relegate the Catalan language⁸.

5. Are there legal, administrative, or other barriers that prevent persons belonging to minorities from participating effectively in cultural, religious, social, economic, or public life?

The Catalan-speaking minority perceives the Spanish justice system as hostile to the Catalan language and to the minority in general. This perception is based on the treatment of the language in the courts⁹, but also on the courts' treatment of policies to promote the language. The Catalan language in the justice system

⁶ Ruling 87/2017 of the Constitutional Court: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2017-8472

⁷ Ruling 117/2022 of the Constitutional Court: <https://hj.tribunalconstitucional.es/docs/BOE/BOE-A-2022-17973.pdf>; Ruling 7/2018 of the Constitutional Court: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2018-2463; Ruling 88/2017 of the Constitutional Court: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2017-8473; Ruling 31/2010 of the Constitutional Court: <https://hj.tribunalconstitucional.es/ca/Resolucion/Show/667>

⁸ Study done by Plataforma per la Llengua: <https://www.plataforma-llengua.cat/que-fem/estudis-i-publicacions/311/novetats-legislatives-en-materia-linguistica-aprovades-el-2021-que-afecten-els-territoris-de-parla-catalana>

⁹ Diagnostic dossier and first package of measures to promote the Catalan language in the areas of Justice (2021): <https://govern.cat/govern/docs/2022/06/16/14/55/4fa13714-b18a-40c4-9e75-1a8d73fd28e9.pdf>

suffers from structural discrimination. The use of Catalan in the courts of Catalonia, the Balearic Islands, and Valencia is residual and far below the population weight of the Catalan-speaking linguistic minority. The most obvious example of functioning that generates mistrust among legal professionals and citizens involved in the proceedings is the systematic violation of a right recognised by law: the right to conduct legal proceedings in the minority language (Catalan). This right should be derived from co-officiality and is recognised by Article 9 of the ECRML. In Catalonia, the Statute of Autonomy also grants the right to receive judicial documentation in Catalan.

Since 2021, the specific application for justice in Catalonia (e-justice) allows you to select the language in which you want to receive the notifications and collects statistics on the language of the documentation. Thanks to this information, it has been possible to provide some data on a very unsettling feeling among lawyers: only 18.7% of requests to receive documentation in Catalan are answered (in other words, 81.3% of plaintiffs who request to be notified in Catalan are notified in Spanish and only in Spanish), a fact that contrasts with the equivalent figure in Spanish: 97% of requests to receive documentation in Spanish are answered. This double standard of measurement affects the parties' perceptions and gives the impression that the Spanish justice system is belittling the Catalan language and the rights of its speakers.

The Spanish State seems unwilling to address this problem and find solutions to it. In December 2019, the Council of Europe reproved the Spanish State for failing to implement the European Charter for Regional and Minority Languages, ratified 18 years ago, and issued recommendations. One of these recommendations is to “amend the Organic Law of the Judiciary to ensure the use of the co-official languages in judicial proceedings when a party so requests”¹⁰. The Council of

¹⁰ Fifth report of the Committee of Experts in respect of Spain (2019). Chapter 1, Point 11: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168096fa01

Europe has defended the need for this legal reform, and the Spanish State's response has been that said reform is unnecessary, given that the right to conduct proceedings in Catalan already exists. However, this was disproved in 2022 by the aforementioned data.

Moreover, cases of abuse by various officials, including the police, to force citizens to speak Spanish when they have the right to speak Catalan are generally tolerated by the Spanish administrative and judicial bodies. The delegation of the Spanish government in Catalonia has refused to install informative posters on linguistic rights¹¹. Furthermore, since the existence of the so-called Ley Mordaza (or Spain's Gag Law), some citizens who want to assert their linguistic rights have been fined under articles that have been denounced as being vague, causing defencelessness¹².

The presence of Catalan is structurally limited by law, here you have some examples that illustrate the situation:

- 93.1% of rulings in Catalonia are in Spanish. Even in the territories with more habitual Catalan speakers, the majority of rulings are in Spanish¹³.
- Several higher courts are state-level courts and operate only in Spanish. Anyone involved in legal proceedings, including lawyers, knows that if the case ends up in these higher courts, the only language that will be accepted is Spanish.
- Article 231 of the LOPJ (the Organic Law of the Judiciary) states that the language of proceedings in regions with two official languages (Spanish

¹¹ Webpage of the campaign: <https://proudecatalanofobia.cat/>

¹² News about this situation: <https://www.naciodigital.cat/noticia/240860/sancionen-601-euros-home-parlar-valencia-centre-salut-dalfafar>, <https://www.naciodigital.cat/latorredelpalau/noticia/81230/dona-terrassa-denuncia-policia-espanyola-vexar-detener-parlar-catala>, https://www.ara.cat/societat/catala-policia-aeroport-multa-plataforma-llengua_1_1376070.html

¹³ Statistical data of the Administration of justice (2021): <https://justicia.gencat.cat/ca/departament/Estadistiques/aj/>

and one other) is determined by the judge and not by the citizen, even though Spain has ratified the ECRML and the committee of experts has indicated that this article is an obstacle to compliance with this international treaty. LOPJ also states that despite this, any party can request that proceedings be conducted in Spanish if using another language would render them “defenceless”. This makes little sense, as parties who do not know Spanish are not considered to be rendered “defenceless” as a result of the use of this language in the proceedings and are only offered translation services. These provisions make it possible for judgments given in Catalan to be subsequently annulled.

- Those involved in legal proceedings and their defence have the right to speak and write in Catalan, but often the judge can not understand them because they are not obliged to know Catalan. Usually, there are no interpreting systems in place, so Catalan speakers know that using their own language can slow down the proceedings and, perhaps, lead to a hostile ruling by the judge. Various provisions (articles 431, 483, 521 and 530 of the LOPJ¹⁴) establish a personnel regime in which Catalan is neither a requirement nor a qualification for access to a post in Catalonia; it is only a qualification for the choice of a geographical destination once said posts have been distributed. The Catalan language can only be required for specific posts.
- Despite having the right to use Catalan, it is common for many judicial officers to ignore the regulations and issue unlawful translation requirements.
- In practice, Catalan speakers in Spain are frequently treated worse than foreigners. For example, by arguing that all Catalans must know Spanish, defendants in criminal proceedings have been denied the right to speak Catalan.

¹⁴ Organic Law 6/1985 of 1 July 1985 on the Judiciary: <https://www.boe.es/eli/es/lo/1985/07/01/6>

6. What are the benefits and/or challenges of recognising and granting sectoral or territorial autonomy to minorities?

The benefits of recognising and granting autonomy, whether sectoral or territorial, are that these actions would help to preserve the continuity of minorities. Autonomy allows minorities to preserve their unique cultural, linguistic, and traditional practices without interference from the majority group. This helps in maintaining diversity within a society.

Another benefit is that it provides them with the opportunity to have a voice in decision-making processes that affect their community and to decide for themselves. This gives minorities space to flourish and empowers them by giving them more rights, which allows them to normalise their situation.

In short, it promotes diversity, inclusivity and conflict resolution, facilitating coexistence and preserving peace by avoiding tensions between groups.