



**ELEN REPORT TO THE U.N. UNIVERSAL
PERIODIC REVIEW, 35th SESSION 2020.**

**LANGUAGE DISCRIMINATION AGAINST NON-
CASTILIAN LANGUAGE SPEAKERS IN SPAIN**

ELEN is the European NGO that works for the promotion and protection of European lesser-used languages. It represents 45 languages with 164 member organisations in 23 European states. It has consultative status with the European Parliament, the Council of Europe, the UN and UNESCO.

ELEN STATEMENT TO THE U.N. UNIVERSAL PERIODIC REVIEW, 35th SESSION.

LANGUAGE DISCRIMINATION AGAINST NON-CASTILIAN LANGUAGE SPEAKERS IN SPAIN

Since ELEN's 2015 Report to the UN UPR on language discrimination in Spain several public institutions in the Kingdom of Spain continue to openly discriminate against non-Castilian languages (Catalan, Galician, Basque which enjoy co-official status, and Aragonese and Asturian which do not). The organisations engaged in defending these languages and the media have regularly highlighted these cases of linguistic discrimination at the national and international level. While the incidents involve different degrees of severity all of them illustrate the low level of respect for speakers of non-Castilian languages as well as being clear violations of the human rights of those citizens. The inability to use co-official languages, and Asturian and Aragonese, is widespread among civil servants and authorities in spite of the official status of these languages (when they have such status) as well as being in violation of several international treaties and conventions signed and ratified by Spain.

CATALAN

ELEN member organisation Plataforma per la Llengua has reported¹ 99 cases of serious un-addressed language discrimination in the Catalan-speaking territories in the period between 2015 and 2019. The cases reported are only the tip of the iceberg in terms of all the discrimination that actually occurs, as in many cases the victims of such illegal abuse never report it, nor do they report it to NGOs or the media. 80% of these compiled cases of discrimination were perpetrated by civil servants of the State national authorities, while cases involving the regional or the local public authorities are less common.

It is very important to highlight that 43% of all the collected serious linguistic discriminations have been undertaken by police officers who abused or fined citizens for the mere fact of addressing them in Catalan. This is an extremely grave reality because discriminations committed by armed police entails a total lack of defenselessness for citizens.

It has to be stressed that the linguistic component is just a part of the human rights violations reported, which could also be fairly considered as acts of xenophobia, physical abuse, humiliation and harassment or violation of legal guarantees. Some cases have involved the denial of medical care on the part of doctors or physical aggression in the hands of police officers.

¹ https://www.plataforma-llengua.cat/media/upload/pdf/aaff-discriminacio-ling-eng_1548342520.pdf

To this effect, it is necessary to take into account that none of the reported cases have ever been investigated nor punished by an administrative or judicial body. Catalan-speaking citizens are in an extremely vulnerable position since they cannot go further than reporting the abuses they receive to the very same institutions that are conducting the abuse. The Committee of Experts from the European Charter for Regional or Minority Languages have expressed their concern for this situation numerous times in their reports on the compliance of Spain with this internationally binding treaty.²

Many Catalan speakers have internalised situations of diglossia and submission to public servants who often impose their will in an arbitrary way (this is particularly clear in the case of the Spanish police, viewed by many Catalan speakers with suspicion and fear). Cases of explicit discrimination are therefore only the tip of the iceberg of a bigger language exclusion problem where the most important phenomenon is the inhibition and self-censorship of Catalan speakers. Explicit knowledge of cases of discrimination, if accompanied by information and a consideration of the rights Catalan speakers have and the ways they can demand them, should raise their awareness and empower them rather than inhibiting them still further.

On the other hand, in the 2015-2019 period there has been a worrisome increase of hate-speech against the school system of Catalonia because of its use of Catalan as the main instruction language. This type of hate speech has not only been produced by regular citizens on the social media, but also Prime Ministers of Castilian-speaking regions, leaders of political parties and Spanish media outlets. For instance, in February 2018 the socialist regional Prime Ministers of Extremadura (Mr. Guillermo Fernández Vara), Castilla-La Mancha (Mr. Emiliano García-Page) and Aragon (Mr. Javier Lambán) took advantage of the imposition of direct rule on Catalonia to call on the Spanish Government to change the education system there to make sure that Catalan ceased to be the main language of instruction. In line with the mainstream Spanish nationalist discourse, these regional Prime Ministers claimed that the fact that education is delivered in Catalan language is one of the factors that contributes to children's "indoctrination" in favour of Catalan independence.

Moreover, the Aragonese Prime Minister even went on to publicly denigrate the Catalan language in November 2018 saying on his Twitter account that "almost all great Catalan novelists write in Spanish". Taking into account the importance of the public office held by Mr. Lambán, the impact of such a false statement with the intent to publicly denigrate Catalan-speaking citizens cannot be underestimated.

Meanwhile, right-wing opposition leaders have not missed the opportunity to portray the Catalan language as a threat to Spain. Mr. Albert Rivera, leader of the Ciudadanos party, stated in February 2019 that if he ever becomes the Spanish Prime Minister he will impose Castilian as

² For example, ECRML COMEX Report on Spain 2015 <https://rm.coe.int/16806f0658>

the main teaching language of the Catalan education system and that he “will never apologise for it” because, according to him, the use of Catalan language as the main teaching language makes it an “indoctrination tool”. In the same month, Mr. Pablo Casado, leader of the Popular Party, said that, if he became Prime Minister, he would pass a language act that would relegate Catalan to the status of an optional language at school.

Finally, the last two former Foreign Ministers of the central government have also made hate speech statements against the Catalan language and the Catalan school system. Mr. Josep Borrell (2018-2019) stated in early 2019 that Spain had been “badly put together because it had not eradicated all languages other than Castilian”. According to Mr. Borrell, “a strong State imposes its language, its culture and its history”. Previously, in 2017, the then Spanish Foreign Minister, Alfonso Dastis, lied on French TV, saying that Castilian was not taught at school and suggesting that the Catalan Government was trying to prevent Catalan students from learning Castilian.

The 2019 Catalan trial.

The European Charter for Regional and Minority Languages (ECRML) establishes in its Article. 9.1.a.i that criminal proceedings must provide that "the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages", a principle that refers to Catalan, Galician and Basque, as stated in the Spanish ratifying document.

However, Spain is in violation of the Treaty because it only allows the use of co-official languages in the territories of the State where they are official. The fact that Catalan political prisoners are being tried in an exceptional court in Madrid, the Supreme Court, violates their rights to be tried in their own language, and such injury will not disappear by the fact that the Tribunal "allows" the defendants to declare in one language or another. In this case there are thousands of documents in Catalan and thousands of hours of video where people use Catalan. Furthermore, given the extremely serious charges being levelled at the prisoners it is incredible that the Spanish Supreme Court is not able to function in the language that is used for much of the evidence.

GALICIAN

The Galician NGO A Mesa pola Normalización Lingüística summed up language rights violations in its 2019 report on the Galician language situation.³ The situation regarding the use of Galician in the education system has significantly worsened since 2010 with the approval of Decree 79/2010 by the autonomous government. This has been pointed out by all unions that

³ <https://www.amesa.gal/noticias/noticias-da-mesa/a-onu-recolle-as-vulneracions-dos-dereitos-linguisticos-en-galiza>

are represented in Galician education, by all student organizations, by all pedagogical renewal movements, and by the majority of parents' associations. This social concern was also reflected in the reports of the third and the fourth evaluation of the Committee of Experts of the Council of Europe on Spain's compliance with the European Charter for Regional or Minority Languages.

Education mainly in Galician is still not offered in any of these three educational stages, not even for those who demand it. This possibility, declared legal by the Galician High Court of Justice in a judgement from January 2008, or even that of an offer that contemplated a minimum of 50% of content in Galician, was eliminated by the current Galician Government that ignored the "assertive instance" that the Committee of Experts of The European Charter for Languages had made in its fourth report, and in the position expressed by the union organizations, parents, pedagogical renewal movements, students and Galician advisory bodies such as the Council of Galician Culture, the Galician School Board, and the Royal Galician Academy. The rejection was so great that it motivated a general strike in the education sector with participation of over 90%.

The possibility of using Galician in the administration of justice affects fundamental rights, for example, when acting in defence and to ensure effective judicial protection. These rights are violated when a judicial process cannot be performed in the native language of the person concerned, as well as limiting the intervention of Galician speakers when defending their interests.

It means that the personal choice of a citizen or a civil servant to use Galician language always results in them being penalized, leading to:

- a) Delays for the citizen, because the need for translators and interpreters imposed by certain judges means that the processes will be slowed down.
- b) A double workload, because in order to carry out their daily work, they must also take on translation work on legislation, documents and forms, which requires awareness and willingness, and not everyone is willing to take on these extra tasks.

These penalties allow us to establish the evident inequality compared with Spanish, as opting for the use of Spanish neither causes delays nor personal sacrifice, as they would have legislation and forms in this language at their disposal from the outset.

The knowledge of Galician continues not to be a requirement to work as a judge, prosecutor or judiciary secretary in Galiza. State legislation ignores the requirements for language skills crediting it only as "desirable".

The Spanish Government also continues to legislate against co-official languages by approving laws that oblige the use of Spanish and prevent the use of other official languages in the State. A clear example is Law 39/2015, dated October 1st, on the common administrative procedure

of public administrations 26 that does not improve the wording of the previous homologous law. The article that regulates linguistic uses (the 15th) is identical to the 36th of the previous Law 30/199227, dated November 26th, on the legal regime of public administrations for the common administrative procedure.

Another example is Article 56 of Legislative Royal Decree 6/2015, dated October 30th, which approves the consolidated text of the Law on traffic, circulation of motor vehicles and road safety, imposing the use of Spanish on traffic signage. This law causes municipalities to be denounced because they have the signs in Galician only, as in the case of the Gondomar Town Council which was denounced by the local Civil Guard.

BASQUE

The Report “Hizkuntza Eskubideen egoera 2018”⁴ published by Behatokia in 2019 includes hundreds of cases of anti-Basque language discrimination. The Report summarised the main problems faced by Basque speakers in terms of language rights. It found that Basque speakers continue to be discriminated against at all levels of public administration, such as healthcare, security, justice, general activity, education, leisure, media, and in consumer relations.

Whether it is at the health centre, renewing your ID card, at the town hall reception, at the sports centre, at the shops, anywhere and at any time, violations of language rights take place, and hundreds of cases have been included in the Report.

The Report recommends that in order to guarantee language rights, all the administrations must take measures, especially local councils as most often they are the first point of contact between the citizen and government.

For the Basque language the most problematic area (although not exclusively) is the Community of Navarre. It is a unique case in Europe where, in the same territory and under the same laws, the linguistic rights of the citizens are recognised depending on the town or city in which they live. It’s difficult to understand why Navarre (600,000 inhabitants and 10,421 sq Km) has to be divided into three linguistic areas. Moreover, Iruñea (Pamplona), the capital of the Foral Community, where most major services are located, is in the mixed language area and thus Basque is not the official language of the capital and Basque-speaking citizens cannot exercise their linguistic rights when availing themselves of such public services. According to these premises, there are two different categories of citizens in Navarre: the Spanish-speaking ones who have full linguistic rights in the whole territory, and Basque-speaking citizens who cannot enjoy the same rights.

⁴ https://issuu.com/hizbeha/docs/hizkuntzaeskubideenegoera2018_1

The January 2019 Report of ELEN member organization Kontseilua to the UN Special Rapporteur for Minorities summed up the language rights problems for Basque speakers and provides wide-ranging evidence from citizens on actual cases of language discrimination.⁵

The Report found that in the public administration only 6.8% of staff in the Basque Autonomous Community are fully fluent in Basque. In some areas not only language rights are breached, but also other fundamental rights such as the right that everyone has to be informed promptly in a language which he understands of the reasons for his arrest and of any charge against him.

Only 34% of the staff in Basque Autonomous Community's health service can speak Basque. It is not known how these 34% of Basque speakers are distributed: how many of those jobs are administrative positions and how many directly involve providing medical attention, i.e. the report ought to indicate how many doctors and nurses have Basque language credentials.

In the case of the Community of Navarre, according to the Navarrese Government's own figures, only 0.57% of jobs in the healthcare system carry a requirement to know Basque, which means that out of the 10,802 members of staff, only 57 speak Basque. Needless to say, this is clearly insufficient to cover the needs and fulfil the rights of citizens.

In the judicial area, of the 343 judges and prosecutors in the Basque Autonomous Community, a mere 16 judges and three prosecutors are bilingual. Among high-ranking staff the level of knowledge of Basque remains very low; for instance, only 35% of processing clerks speak Basque, and 10% of forensic scientists. There are two consequences that result from this low incidence of Basque language competence: it is virtually impossible to have a trial in Basque today, and when citizens want Basque to be used it results in delays. For Navarre it is not clear if there is even one judge who speaks Basque.

The ECRML Committee of Experts 2015 recommendations⁶ echo the Behatokia Report for the Basque autonomous community and Navarre. They recommend:

- amending the legal framework with a view to making it clear that the criminal, civil and administrative judicial authorities in the Basque Country will conduct the proceedings in Basque at the request of one party;
- to take the necessary measures to ensure, as appropriate, that the parties to a proceeding are specifically informed of the obligation of the judicial authorities in the Basque Country and Navarre to conduct the proceedings in Basque if one of the parties so requests, in conformity with the undertakings entered into by Spain under Article 9 para. 1.a.i, 1.b.i and 1.c.i of the Charter;

⁵ <http://kontseilua.eus/app/uploads/2019/01/REPORTUNLINGUISTICMINORITIES.pdf>

⁶ <https://rm.coe.int/16806f0658>

- to take the necessary measures to increase, where appropriate, the proportion of judicial staff in the Basque Country and Navarre, at all levels and particularly among judges and prosecutors, who are able to use Basque as a working language in courts.

Furthermore, for Navarre, it strongly urges the Spanish authorities to substantially increase the number of Basque-speaking staff in the relevant state administration offices and to develop adequate training schemes.

ASTURIAN and ARAGONESE

Neither Asturian or Aragonese have co-official status despite long-running popular campaigns for such status. Without such status speakers of Asturian and Aragonese continue to lack the protection that other co-official language speakers have.

ELEN RECOMMENDATIONS

ELEN recommends that the Spanish authorities take account of all the observations and recommendations of ELEN member organisations as well as the Council of Europe's ECRML Committee of Experts and Committee of Ministers and, as a matter of priority:

1. Amend the legal framework with a view to making it clear that the criminal, civil and administrative judicial authorities in the Autonomous Communities can conduct the proceedings in co-official languages at the request of one party;
2. Implement legal and step up practical measures aimed at ensuring that an adequate proportion of the judicial staff posted in the Autonomous Communities concerned by the application of Article 9 of the ECRML has a working knowledge of the relevant languages;
3. Implement legal and step up practical measures aimed at ensuring the adequate presence of the co-official languages in the State administration at the level of the Autonomous Communities;
4. Implement measures to ensure the presence of co-official languages in public services, especially in healthcare services;
5. Introduce legislation that acts to eliminate legal and de-facto discrimination against non-Castilian languages spoken in Spain.

6. Ensure that the offer of trilingual education does not adversely affect the protection and promotion of co-official languages;
7. Enact legislation to give Basque full official status throughout Navarre.
8. Extend co-official status to Asturian and Aragonese.

ANNEX: Report on País Valencià

This annex to the ELEN UPR Report on Spain discusses the situation in País Valencià regarding language discrimination against Valencian.

There has been no change since the last ELEN UPR report on Spain 2015 which found that language discrimination by State officials against the co-official languages Catalan, Valencian, Basque, Galician, as well as Asturian and Aragonese, was systemic and institutionalized. What is of particular concern is that the discrimination is occurring against speakers of official languages meaning that Spanish civil servants and police officers are acting in violation of Spanish law itself.

Regarding Valencian, the most immediate problem is the absence of guarantees that the civilian population can use Valencian normally in their relations with public services and public powers. The overarching problem is that public employees, in general, only have the obligation to know Spanish, even though the Valencian Community has two official languages (Valencian and Spanish).

In municipalities where Valencian usage predominates and in the autonomous administration of the regional government, the linguistic rights of citizens, in general, are respected. However, with the health-care services, which are the responsibility of the regional government, and in the rest of Valencian municipalities and in the administration of the central government in the Valencian Community, Valencian occupies a marginal position and situations of linguistic discrimination are frequent. Finally, in the judicial system and with the National Police and Civil Guard, who are the responsibility of central Spanish institutions, linguistic discrimination is an everyday reality.

With the local authorities, such as judges, policemen, doctors and other health officials, there have been many incidents of linguistic discrimination against co-official language speakers since 2015. Hardly a week goes by without a new case of some form of language discrimination. For example, the threats faced by Jafet Penido from Elx for speaking Valencian to a policeman in

June 2019,⁷ the numerous incidents reported by Plataforma per la Llengua País Valencià,⁸ and the latest incident (from Mallorca) with the threat of a €225,000 fine faced by airport worker Paula Rotger for saying “Bon dia i gracies” to a Spanish Civil Guard in Palma Airport in July 2019,⁹

However, there is not one single case where any civil servant or police officer has been sanctioned after an episode of linguistic discrimination. Similarly, with private enterprises the situation is the same. Civil servants and police officers know that they are able to act with impunity if they decide to abuse, insult, threaten, or deny a service to a customer, and that there will be no negative consequences whatsoever.

Under these conditions existing legislation is worthless. By its lack of action the state is sending a clear signal that it has no intention at all of enforcing the laws and norms designed to protect co-official language speakers and thus, speakers of these languages quite understandably fear using their language and switch to the dominant one with increasing frequency. These policies clearly violate the Spanish Constitution (Article 3) and are openly anti-democratic and discriminatory.

The autonomous government has created an Oficina de Drets Lingüístics to gather language-related complaints and to advise citizens on their language rights. However, and crucially, it has no powers to sanction public and private organisations over cases of linguistic discrimination.

To summarise, it continues to be difficult for Valencian speakers to use their language in a natural and non-confrontational way, with the public administration largely to blame for that. This is because the administration are: (a) sometimes the perpetrators of language discrimination, and (b) never enforce the laws and norms designed to protect co-official language speakers from discrimination.

ELEN Recommendations

- 1) Modify the Valencian legislation to ensure that all public employees of the local and regional administration and of health care services know the two official languages and can guarantee the linguistic rights of all citizens.

⁷ <https://www.vilaweb.cat/noticies/policies-espanyols-denuncien-ciutada-elx-per-parlar-catala/>

⁸ <https://www.plataforma-llengua.cat/territorials/pais-valencia/>

⁹ https://www.dbalears.cat/balears/2019/07/30/329543/paula-rotger-estic-disposada-arribar-fins-final-fins-demosstri-succeir-aeroport.html?fbclid=IwAR2b_3teRTOQj-HHzNE_6q7g8mgoekYSyNK6LdVC4-xYB4eqnKdatU5Rfbg

- 2) Modify the legislation that regulates the Spanish judicial system, the National Police and the Civil Guard, and the Peripheral Administration of the Spanish central government to guarantee the linguistic rights of citizens who speak Valencian on all occasions.
- 3) Improve the effectiveness of the Language Rights Office by giving it the powers to sanction and/or fine public and private bodies for anti-Valencian language discrimination.
- 4) Establish the post of Valencian language commissioner as part of the Language Rights Office to ensure that Valencian speakers' language rights are upheld.

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