

Fundación Manuel Giménez Abad

Oficialidad lingüística y lenguas docentes en España: balance y perspectivas

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La inmersión en las lenguas oficiales
como lenguas docentes en España a la
luz del estándar europeo

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- I. ¿Hay un estándar europeo sobre lenguas de enseñanza?
 - . Inexistencia de un estándar general acerca de las lenguas de enseñanza
 - . El CEDH y la cláusula antidiscriminatoria por razón de lengua: límites
 - . Protocolo adicional al CEDH – Article 2 Right to education
No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, **the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.**

- . Presupuesto: existencia de lenguas oficiales, que se imponen con carácter general
 - El derecho a la educación no tiene un contenido lingüístico a estudiar en la lengua de elección del afectado o de sus progenitores o tutores... cuando esa lengua no es oficial
 - Derecho a la enseñanza solo en la lengua oficial del territorio

- . La STEDH *régime linguistique de l'enseignement en Belgique*, de 23.07.1968 (demandas n. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63 y 2126/64)
 - interpréter les dispositions del Convenio “comme reconnaissant à toute personne placée sous la juridiction d'un Etat *un droit à être instruite dans la langue de son choix* conduirait à des *résultats absurdes, car chacun pourrait ainsi revendiquer une instruction donnée dans n'importe quelle langue dans l'un quelconque des territoires des Parties Contractantes*” (énfasis añadido).

II. El estándar de protección de las lenguas minoritarias y la enseñanza

- . La necesidad de proteger las lenguas minoritarias distintas de la lengua oficial del Estado
- . Los instrumentos de protección del CoE
 - Las minorías nacionales y el CMPMN (1995)
 - Las lenguas regionales o minoritarias y la CELRM (1992)

- . La limitada relevancia (a nuestros efectos) del CMPMN
 - No reconocimiento por España de minorías nacionales internas, salvo la minoría gitana (Roma)
 - Una protección genérica y débil de los derechos de las minorías nacionales en la educación

Article 12

1. The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

2. In this context the Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.

3. The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

Article 13

1. Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.
2. The exercise of this right shall not entail any financial obligation for the Parties.

Article 14

1. The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.
2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, **as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.**
3. Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.

. La centralidad de la CELRM

- Un Convenio con un abanico de compromisos ‘a la carta’ y con distintos niveles de exigencia

Article 2 – Undertakings

1 Each Party undertakes to apply the provisions of Part II to all the regional or minority languages spoken within its territory and which comply with the definition in Article 1.

2 In respect of each language specified at the time of ratification, acceptance or approval, in accordance with Article 3, **each Party undertakes to apply a minimum of thirty-five paragraphs or subparagraphs chosen from among the provisions of Part III of the Charter**, including at least three chosen from each of the Articles 8 and 12 and one from each of the Articles 9, 10, 11 and 13.

- Un Convenio con una protección detallada y exigente
 - . España ratificó todos los compromisos y en el nivel más elevado o exigente

1st. Report of Commex 21.09.2005 - Findings

C. Spain has opted for **a number of undertakings which is far above the limit set in the Charter**. In many areas Spain also entered into the highest undertakings. The Committee of Experts **commends the choice of the Spanish authorities of devising and adopting an ambitious instrument of ratification**, which points to their strong long-term commitment. At the same time, there still exists a clear gap between some of the undertakings chosen and the level of protection offered by the domestic legal framework and/or practice.

Findings

B. Spain must be praised for the high recognition and degree of protection provided in principle to regional or minority languages and for the courage and farsightedness it has shown in doing so. **This places Spain in the forefront of the European countries seriously committed to the protection and promotion of regional or minority languages.** The following findings, which highlight a number of shortcomings, should therefore be read in the light of these preliminary remarks and aim at encouraging the Spanish authorities to improve, where this is needed, an already remarkable system.

1st. Report of Commex 21.09.2005

Article 8 – Education

1 With regard to education, the Parties undertake, within the territory in which such languages are used, according to the situation of each of these languages, and without prejudice to the teaching of the official language(s) of the State:

- a i to make available pre-school education in the relevant regional or minority languages; or*
- ii to make available a substantial part of pre-school education in the relevant regional or minority languages; or
- iii to apply one of the measures provided for under i and ii above at least to those pupils whose families so request and whose number is considered sufficient; or
- iv if the public authorities have no direct competence in the field of pre-school education, to favour and/or encourage the application of the measures referred to under i to iii above;

- Un Convenio con un sistema de seguimiento y supervisión exigente

- . Los informes periódicos por parte de los Estados signatarios sobre el estado de cumplimiento de sus compromisos (“at three-yearly intervals after the first report”)

- . Informe del Comité de Expertos (Commex)

- . El papel de las ONGs

- . Las Recomendaciones del Comité de Ministros

Article 15 – Periodical reports

1. The **Parties** shall present **periodically** to the Secretary General of the Council of Europe, in a form to be prescribed by the Committee of Ministers, **a report on their policy pursued in accordance with Part II of this Charter and on the measures taken in application of those provisions of Part III which they have accepted.** The first report shall be presented within the year following the entry into force of the Charter with respect to the Party concerned, the other reports at three-yearly intervals after the first report.

2. The Parties shall make their reports public.

Article 16 – Examination of the reports

1. The reports presented to the Secretary General of the Council of Europe under Article 15 **shall be examined by a committee of experts** constituted in accordance with Article 17.

2. **Bodies or associations legally established in a Party may draw the attention of the committee of experts to matters relating to the undertakings entered into by that Party under Part III of this Charter.** After consulting the Party concerned, the committee of experts may take account of this information in the preparation of the report specified in paragraph 3 below. These bodies or associations can furthermore submit statements concerning the policy pursued by a Party in accordance with Part II.

3. On the basis of the reports specified in paragraph 1 and the information mentioned in paragraph 2, **the committee of experts shall prepare a report for the Committee of Ministers.** This report shall be accompanied by the comments which the Parties have been requested to make and may be made public by the Committee of Ministers.

Article 17 – Committee of experts

- 1. The committee of experts shall be composed of one member per Party,** appointed by the Committee of Ministers from a list of individuals of the highest integrity and recognised competence in the matters dealt with in the Charter, who shall be nominated by the Party concerned.
2. Members of the committee shall be appointed for a period of six years and shall be eligible for reappointment. A member who is unable to complete a term of office shall be replaced in accordance with the procedure laid down in paragraph 1, and the replacing member shall complete his predecessor's term of office.
3. The committee of experts shall adopt rules of procedure. Its secretarial services shall be provided by the Secretary General of the Council of Europe.

- Problemas en el cumplimiento de los compromisos de la CELRM en el ámbito de la enseñanza
 - . La necesidad de garantizar un modelo de inmersión lingüística y la opción por modelos bilingües obligatorios: Baleares, Valencia y Galicia

Findings

L. Education in Catalan in the Balearic Islands, and in Galician and Valencian is based on a structured **bilingual model**. However, **this does not correspond to the undertakings chosen, which imply an offer also of models of education given essentially in the regional or minority languages**. The considerable efforts made by the Valencian authorities towards developing a “full-immersion” model on top of the bilingual one, although still offered in a limited manner, show that **the two models can co-exist**. A systematic offer of a “fullimmersion” model alongside the bilingual one is the objective towards which all three autonomous communities concerned should aim with a view to gradually fulfilling the undertakings entered into.

. ¿Aval a la existencia de un modelo de inmersión obligatorio para todos?

218. (...) The Committee of Experts understands these undertakings to mean that education in Catalan shall be made available in the territories where Catalan is used. **The Charter does not demand compulsory education for all pupils, only that it shall be made available so that all pupils will receive education in Catalan if parents so wish.**

2nd. Report of Commex 11.12.2008

Findings

H. In most of the autonomous communities education in the co-official language is based on a structured bilingual model. However, this does not correspond to the undertakings chosen by Spain, which imply an offer also of models of education given essentially in the regional or minority languages. The development of a “full-immersion” model on top of the bilingual model is the objective towards which all the autonomous communities concerned should aim with a view to gradually fulfilling the undertakings entered into. Furthermore, a system based in education essentially in the language is supposed to be available to those who request it but not compulsory for all children.

2nd. Report of Commex 11.12.2008

Muchas gracias