

A LOOK AT THE EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES FROM THE POINT OF VIEW OF THE BASQUE LANGUAGE AND THE BASQUE COUNTRY

Patxi Baztarrিকা Galparsoro*

Abstract

The European Charter for Regional or Minority Languages (hereinafter the ECRML or Charter) is an international treaty whose formally accepted objectives, principles and undertakings are binding for those European States which have ratified it. The Charter has had a positive, albeit unbalanced, impact on the future of the languages under its protection. It has also been positive to the extent that it has provided the basis for revitalisation of the use of the Basque language (*Euskara* in the original language). This paper presents a reflection on how the ECRML has benefitted the Basque language, but also on its limitations, and, in light of the results, on the possible need to improve and revise the Charter in view of its shortcomings and the challenges facing minority and minoritised languages – or rather minority and minoritised linguistic communities – in Spain and Europe. If the ECRML is considered from the point of view of the Basque language, it is clear that the implementation of the Charter has not been uniform throughout the three regions where the Basque language is spoken. The first pages of this paper therefore focus on the impact that the Charter has had in the Northern Basque Country and the Chartered Community of Navarre, although the rest of the paper provides a detailed analysis of the situation in the Basque Autonomous Community.

Before reflecting on the challenges, the paper analyses the fundamental elements of the Charter which have affected its implementation in the Basque Autonomous Community and the Spanish State, and provides a detailed analysis of the scope and high degree of compliance with the Charter in the former. The implementation of the Charter in the Basque Autonomous Community has not been an outright success but rather has entailed a process of light and dark in which light has clearly prevailed. Nevertheless, the dark, in the form of structural failings, exists and relates primarily to the sphere of competence corresponding to Spain's central institutions. Emphasis is also placed on the need for language policies within the Spanish State and European Union to promote true linguistic diversity in the aforementioned regions, that is, policies which encompass more than just official languages at state level.

Keywords: ECRML; evaluation; Spanish State; Basque language; Basque Autonomous Community; Chartered Community of Navarre; Northern Basque Country; Europe; linguistic diversity; compliance

ESKUALDEETAKO EDO EREMU URRIKO HIZKUNTZEN EUROPAKO GUTUNARI BEGIRADA BAT EUSKARATIK ETA EUSKAL HERRITIK

Laburpena

Eskualdeetako edo Eremu Urriko Hizkuntzen Europako Gutuna nazioarteko tratatu bat da, eta bere helburuak printzipioak eta konpromisoak bete beharrekoak dira Gutuna onartu eta berretsi duten Europako Estatuentzat. Gutunak eragin positiboa izan du bere babes eremuan dauden hizkuntzen bilakaeran, nahiz neurri desberdinean eragin duen hizkuntza batzuetan eta besteetan. Positiboa izan da, baita ere, euskara biziberritzeko prozesua sendotzeko. Artikulu honek gogoeta bat eskaintzen du Gutunak euskararentzat izandako balio eta onurei buruz, bai eta haren mugei buruz ere; ondorioz, planteatzen du Gutuna hobetzea eta eguneratzea komeni dela, kontuan hartuz dituen gabeziak eta, halaber, gutxiengo hizkuntzek eta hizkuntza gutxituek (edo, hobeto esanda, gutxiengo hizkuntza komunitateek eta hizkuntza komunitate gutxituek) Espainiako eta Europako testuinguruetan dituzten erronkak. Bestalde, Gutunari euskararen ikuspegitik egindako begiratu honek ezin du saihestu euskararen hiru lurraldeetan Gutunak aplikazio desberdina izan duela; horregatik, lehenbiziko orrialdeetan, Gutunak Ipar Euskal Herrian eta Nafarroako Foru Komunitatean izan duen eraginaz dihardu artikuluak, nahiz eta analisi xeheena Euskadiko Autonomia Erkidegoari buruzkoa den.

Gutunaren erronkei buruzko gogoeta egin aurretik, artikuluan analisi bat egiten da Gutunak Euskadin eta Espainiako Estatuan duen aplikazioa baldintzatzen duten elementu funtsezkoen gainean, eta xeheki aztertzen dira Gutunak Euskadin izan dituen irismena eta betetze maila altua. Gutunak Euskadin duen aplikazioa argi-ilunen prozesu bat da: argi-ilun horietan argiak nagusitzen dira nabarmen, baina badira izaera estrukturalako itzal batzuk ere, funtsean Estatuaren erakunde zentralen eskumen alorretik datozenak. Halaber, artikuluan azpimarratzen da beharrezkoa dela Espainiako Estatuak eta Europar Batasunak hizkuntza politika propioak garatzea, estatu hizkuntzaz haragoko hizkuntza aniztasun erreala sustatzeko.

Gako-hitzak: Hizkuntzen Gutuna; ebaluazioa; Espainiako Estatuak; euskara; Euskadi; EAE; Nafarroa, Ipar Euskal Herria; Europa; hizkuntza aniztasuna; betetze maila; txostena

*Patxi Baztarrিকা Galparsoro has a degree in Philosophy and Education Sciences from the University of the Basque Country (UPV-EHU) and is an expert in language planning. He has been the Vice-Councillor for Language Policy of the Basque Government (2005-2009 and 2012-2016) and President of the Network to Promote Linguistic Diversity (NPLD) (2015-2017). px.baztarrিকা@gmail.com

Paper received on 31.01.2018. Blind evaluation: 21.02.2018. Acceptance date of final version: 21.03.2018.

Recommended citation: Baztarrিকা Galparsoro, Patxi. "A Look at the European Charter for Regional or Minority Languages from the Point of View of the Basque Language and the Basque Country". *Revista de Llengua i Dret, Journal of Language and Law*, Issue 69 (June 2018), p. 52-77. DOI: [10.2436/rld.169.2018.3096](https://doi.org/10.2436/rld.169.2018.3096).

Summary

1 Introductory notes on how the impact of ECRML has varied between the three Basque-speaking regions

1.1 The ECRML: “absent” legislation for the Basque language in the Northern Basque Country (France)

1.2 The uneven implementation of the ECRML in the Chartered Community of Navarre

2 Implementation of and compliance with the ECRML in the Basque Autonomous Community

2.1 Fundamental characteristics of the Charter affecting its implementation in the Basque Autonomous Community and the Spanish State

2.2 Scope of the undertakings in the Basque Autonomous Community and (high) level of compliance

3 The ECRML in the face of the new challenges facing linguistic diversity management, taking into account non-hegemonic and minoritised languages

BIBLIOGRAPHY

Documents consulted

On the occasion of the 20th anniversary of the entry into force of the European Charter for Regional or Minority Languages (hereinafter ECRML),¹ this paper presents a reflection on both the value and benefits of the Charter for the Basque language as well as its limitations. It also discusses whether the Charter should be improved and revised in view of the challenges that minority and minoritised languages² (or rather, perhaps, minority and minoritised linguistic communities) are already facing and will face in the near future in Spain and Europe. The challenges posed by the ECRML are not specific or exclusive to the Basque language, although logically, certain aspects of the Charter have a specific bearing on this case. For this reason, future reflection must be based on an outlook that transcends the Basque language and its regions, instead adopting a broader perspective that analyses the situation in both Spain and Europe.³

1 Introductory notes on how the impact of ECRML has varied between the three Basque-speaking regions

It must be pointed out from the start that this reflection on the benefits for the Basque language of the ECRML has been conducted fundamentally, although not exclusively, from the viewpoint of the Basque language in the Basque Autonomous Community, a territorial area in which 85.8% of the approximately 943,000 people making up the Basque-speaking population is concentrated. This is an important observation, because, just as the social development of the Basque language since the 1980s has clearly varied between the three judicial and administrative spheres (the Basque Autonomous Community, the Chartered Community of Navarre and the Northern Basque Country) comprising the whole of the Basque region (Euskal Herria), the degree of implementation of and compliance with the ECRML has also varied.

Thus, according to the Sixth Sociolinguistic Survey of Euskal Herria,⁴ an analysis of the population aged 16 years or over in the period 1991-2016 showed that while in the Basque Autonomous Community the number of Basque speakers grew by almost 10 percentage points (an increase which, in reality, would be even higher if the under-16 population was also taken into consideration), The Chartered Community of Navarre recorded moderate growth of just 3.5 points, and the Northern Basque Country experienced a loss of 6 points.⁵ Similarly, if we turn our attention to the variation in the use of the Basque language for the same period (1991-2016), the Sociolinguistic Survey shows us that although the percentage of people intensively

1 The ECRML (published in the BOE [*Official Spanish Gazette*] no. 222 of 15.09.2011) was passed by the Council of Europe in Strasbourg in November 1992 but did not enter into force until six years later, in 1998, the year in which the requirement was fulfilled for its entry into force established in Article 19, according to which at least five Member States of the Council of Europe would have to formally express their consent to be bound by the Charter. In the Spanish State it came into force in 2001, because although Spain had signed the Charter in 1992, it did not proceed to ratify it until 2001, thereby meeting the condition that each state was required to fulfil before the Charter could come into force.

2 In accordance with the meaning habitually given in sociolinguistic glossaries, we use the term “minority language” to refer to the demographic weight of a language in regard to another which is spoken in the same region, and “minoritised language” to refer to a language which is restricted in its uses and functions in comparison to the hegemonic or dominant language. The terms are not synonymous, although they could be compatible.

3 At the date on which this paper was drafted in February 2018, four reports had been prepared to assess how the ECRML was being applied in Spain. These reports were all passed and published by the Council of Europe (in 2005, 2008, 2012 and 2016). Our analysis of compliance with the Charter in the Spanish State has taken into account the information, comments and recommendations contained in these reports.

4 The Sociolinguistic Survey is the principal instrument of research into the social development of the Basque language in its three regions. It is a five-yearly survey, which has been conducted by the Basque Government since 1991 on the population aged 16 years or over of the Basque Autonomous Community, the Chartered Community of Navarre and the Northern Basque Country, in order to obtain information on a number of aspects. These aspects included the transmission of the Basque language within the family, linguistic competency in the Basque language, use of the Basque language in different public and private spheres, citizens’ attitudes to the promotion of the use of the Basque language and the citizens’ assessment of the policies implemented by the governments of the Basque Autonomous Community and Navarre to promote the Basque language. Several editions of the survey were conducted by the Basque Government in collaboration with the Public Bureau of the Basque Language in the Northern Basque Country (Euskararen Erakunde Publikoa – Office Public de la Langue Basque), The Sixth Survey, published in 2016, was conducted jointly for the first time by the Basque Government, the Government of Navarre and the Public Bureau of the Basque Language, and was led and coordinated by a commission composed of the heads of language policy of the three public authorities concerned. See: www.euskara.euskadi.eus

5 In any case, it must be pointed out that among the 16-24 age group in the Northern Basque Country, the general declining trend of these last few decades is being inverted, to the extent that in the last twenty years the bilingual population has increased by 7.6 points in this young age bracket.

using the Basque language⁶ increased by 5 points in the Basque Autonomous Community, in the Chartered Community of Navarre it remained steady with no significant variation, and in the Northern Basque Country the percentage had dropped.

It comes as no surprise that this inequality in the way that the Basque language has developed socially over the last twenty-five years has carried over to the way in which the ECRML has been implemented in the Basque-speaking regions during the seventeen years in which it has been in force in Spain. As we will see below, each of the three regions has a different affiliation with the Charter. Moreover, the legal frameworks governing language policy that are in place in each region differ widely and it is important to remember that they⁷ were established long before the entry into force of the ECRML in the Spanish State. Furthermore, the language policies that have been developed and which explain to a substantial degree the unequal social development of the Basque language in the Basque Autonomous Community and the Chartered Community of Navarre are based precisely on the aforementioned language legislation in these regions.

1.1 The ECRML: “absent” legislation for the Basque language in the Northern Basque Country (France)

The Charter is neither implemented nor taken into consideration in the Northern Basque Country, because, as is common knowledge, the ECRML is not in force in the French Republic. The French State signed the Charter in 1999, announcing in the signature document the undertakings which, if applicable, it would proceed to formalise by means of the relevant instrument of ratification. To this day, the French State has still not ratified the Charter, which is therefore not in force, and consequently in the Northern Basque Country the Basque language has lacked and continues to lack the support of this instrument of protection.

However, where implementation of the ECRML would be especially relevant is precisely in the Northern Basque Country. This is a Basque enclave in the French State where the Basque language lacks any degree of official recognition (in contrast with in the Basque Autonomous Community, where it is an official language throughout, or in the Chartered Community of Navarre, where it is official in the *vascófona* or “Basque-speaking” area). It comes as no surprise that in France, faithful to its Jacobin tradition, the French language alone is accorded official status (according to Article 2 of the French Constitution, “The language of the Republic is French”), and, in a supremacist hierarchy where French reigns supreme, the other historical languages spoken in the Republic, including the Basque language, are recognised as heritage languages⁸. Their recognition as heritage languages, however, does not necessarily entail the development of effective regulations to promote their use. In practice, these languages are relegated by France’s central institutions to second place. At the Civil Registries, for example, the names of persons in languages other than French must compulsorily be registered using French spelling, which means that names in Breton, Occitan or the Basque language cannot be transcribed using their own spelling, as it does not always coincide with that of French. A clear example of this ideology based on a zeal for uniformity and homogeneity can be found in the words of none other than the Minister of Education, Jean-Michel Blanquer, to explain his position against inclusive language in matters of gender: *Il y a une seule langue française, une seule grammaire, une seule*

6 In the typologies of the Sociolinguistic Survey, the term “intensive use” is given to the use of the Basque language in a proportion equal to or greater than Castilian (in the Basque Autonomous Community and the Chartered Community of Navarre) or French (in the Northern Basque Country).

7 Although the ECRML came into force in the Spanish State in 2001, in the Basque Autonomous Community it was preceded twenty-two years earlier, in 1979, by the Statute of Autonomy, whose Article 6 recognises the Basque language, as well as Castilian, as an official language throughout the region of the Basque Autonomous Community, grants all the citizens the right to know and use the Basque language and Castilian and requires the public authorities to guarantee the effective exercise of that right. Three years later – that is, nineteen years before the ECRML – Law 10/1982 for the Normalisation of the Use of Basque was passed and brought into effect. In 1982, Navarre passed the Organic Law on the Reintegration and Improvement of the Autonomous Regime in Navarre (equivalent to the Statutes of Autonomy), Article 9 of which established the Basque language as a co-official language in an indeterminate part of the region, being followed in 1986 with the entry into force of Regional Law 18/1986 on the Basque Language, which delimited within the Chartered Community of Navarre the exact area within which the Basque language was also to be considered an official language.

8 According to Article 75-1 of the French Constitution, introduced in the reform carried out in 2008, “the regional languages belong to the heritage of France.” This recognition must be considered to be an advance. From the point of view of the aforementioned hierarchy, the placing of Articles 75-1 and 2 in the Constitution is significant: Article 75-1 is inserted in Title XII, referring to territorial entities, while Article 2, which proclaims the exclusivity of French as “the language of the Republic,” is in Title I, relating to sovereignty.

République.⁹ If there is no room for variations even in the language of gender, how can the spellings of other languages be accepted? In fact, this statement gives us the clearest example possible of the exclusive status of a language.

The different attempts at ratification and entry into force of the ECRML in France have been the subject of enormous controversy in the French political, social and media panorama since the years of Jacques Chirac's presidency. More specifically, this controversy has raged since the decision adopted in 1999 by the French Constitutional Council,¹⁰ in which the Council fixed its position on, among other matters, the (in) compatibility of the ECRML treaty and the French Constitution and on the possible collision between the treatment of languages in the Charter and the constitutional principles of the Republic. The point of view which emanates from that decision was later replicated in the basic principles underlying other positions, such as the non-binding guidelines issued by the State Council,¹¹ which have been unfavourable to the ratification of the ECRML. Even the Académie Française, the authority on the French Language, has declared its support for categorically guaranteeing the supremacy of French over the country's regional languages, reserving constitutional recognition solely for French.¹² It is true that, as France already intimated at the treaty's signing ceremony in 1999, French ratification of the ECRML would be considerably more limited than that of Spain in regard to the undertakings assumed. However, its very ratification and entry into force would be positive for the Basque language, because, regardless of the limitations, it would signify the beginning of legal recognition of linguistic diversity in a State – France – which in practice merely tolerates other languages and imposes the logic of a single language. The last attempt at ratification, which likewise proved fruitless, was made in 2015, during François Hollande's presidency. In June the French Government considered a draft constitutional bill for the ratification of the Charter and requested the corresponding opinion from the State Council, which, as already mentioned, was unfavourable to ratification in the end.¹³

In France the ECRML is, then, an “absent” piece of legislation, with languages other than French condemned to live without the protection of this international instrument, and with no official status or State legislation to promote them. It could be said that France is the living example of the long journey that the Charter has ahead if it is to become more effective in preserving and developing linguistic diversity within Europe.

1.2 The uneven implementation of the ECRML in the Chartered Community of Navarre

In regard to the Basque language in the Spanish State, there have also been differences in the way in which the Charter has been implemented in the Basque Autonomous Community and Chartered Community of Navarre, and implementation of the Charter in the latter has also lacked uniformity. In order to fully appreciate the situation, one must bear in mind that the Charter brings under its protection the so-called “historical, regional or minority languages of Europe,” considering as such those spoken by a population group that is smaller than the rest of the State's population and which are different to the “official language(s) of the State.” The Basque language, therefore, falls into this category. The Charter, however, distinguishes two general levels of protection, which are specified in Parts II and III of the same.

Part II of the Charter, which is applicable to all regional or minority languages spoken in the region, establishes the general obligation to promote the learning and the oral and written use of the regional or minority languages in both public and private life, and the enhancement of their value as a cultural asset to be preserved. Part III, however, goes a step further and contains specific measures that should be adopted

⁹ See *Libération*, 17 November 2017, and the Minister's official Twitter account.

¹⁰ See decision no. 99-412 DC of 15 June 1999, in www.conseil-constitutionnel.fr

¹¹ See opinion no. 390268 of 30 July 2015, unfavourable to the project of a constitutional law authorising the ratification of the ECRML, in www.legifrance.gouv.fr

¹² See the declaration approved by the Académie Française on 12 June 2008, in www.academie-francaise.fr/actualites/la-langue-de-la-republique-est-le-francais

¹³ See the opinion referred to in note 11. At the end of June 2015 the Network to Promote Linguistic Diversity (NPLD) sent a letter to the French President, François Hollande, encouraging him to continue in his publicly announced commitment to support ratification of the ECRML. On 13 July, Mr Hollande's Cabinet Secretary replied with a letter which said, among other things: *Particulièrement sensible à votre démarche ainsi qu'à vos marques de soutien, Monsieur François Hollande m'a confié le soin de vous en remercier vivement. Soyez assuré du plein engagement du Chef de l'État en faveur de la ratification de la Charte européenne des langues régionales ou minoritaires, qui garantit la protection du patrimoine linguistique et historique de l'Europe.*

in order to effectively promote the use of regional or minority languages in different spheres, particularly in education, justice, public services and the media.

In regard to the specific measures included in Part III, the Charter is, to a certain extent, something of an “à la carte menu”. Each State, upon signing the Charter and, more specifically, upon approving its entry into force through ratification, selects from a total of 68 undertakings on the “menu” those which “they promise to fulfil and oblige to be fulfilled” (never fewer than 35). In relation to the 68 undertakings included in Part III of the Charter, Spain is one of the States that has adopted the highest number of binding undertakings as it has taken them on in their entirety, that is, it has adopted all of the 68 specific protection measures set out in the European treaty.

However, when ratifying the Charter, the Government of Spain differentiated between two groups of regional or minority languages in the State (on the one hand, languages with official status acknowledged in the Statutes of Autonomy, and, on the other hand, languages which, although not official, have some type of recognition in the said Statutes). The Spanish Government undertook to “fulfil and oblige to fulfil” the 68 undertakings only in relation to the languages of the first group, that is, to those which are recognised as official languages.¹⁴ Consequently, if we consider how the Charter applies to the Basque language we can see that Part III of the ECRML, containing all the operative provisions of the Charter, is applied in the Basque Autonomous Community and in part of the Chartered Community of Navarre, specifically in the “Basque-speaking area”,¹⁵ which comprises no more than 10% of the population. In the rest of the Chartered Community of Navarre Part II applies although, given that this issue regarding the extent of the application of the Charter is of such importance, it has been the cause for discussion between the various affected parts ever since the first monitoring report of the ECRML in Spain was published in 2005.¹⁶ So, in one geographical area of the Chartered Community of Navarre only Part II is applied, while in another area (legally referred to as “Basque-speaking”), Part III is also applied.

In view of the specificity of the Chartered Community of Navarre’s own language legislation, which divides the region into three sociolinguistic zones, giving the Basque language official status in only one of them – the “Basque-speaking area” – but recognising some linguistic rights in the other two,¹⁷ the Charter is unquestionably an instrument of great importance. The reason for its importance is that compliance entails a positive and non-restrictive interpretation of this sociolinguistic zoning in terms of promoting the use of the Basque language. I refer, specifically, to Article 7 of the Charter. The objectives and principles of paragraphs 1 and 2 of this article clearly point towards the need to develop policies that would have a positive effect on the Basque language. However, in the Chartered Community of Navarre, the sociolinguistic diversity of

14 As is expressly stated in the declaration of ratification, these are “the languages recognised as official in the Statutes of Autonomy of the Autonomous Communities of the Basque Country, Catalonia, the Balearic Islands, Galicia, the Autonomous Community of Valencia and the Chartered Community of Navarre”, although in the case of the latter the territorial scope of application is restricted.

15 Article 9 of Organic Law 13/1982 on the Reintegration and Enhancement of the Autonomous Regime of Navarre establishes that “Castilian is the official language of Navarre,” and “*vascuence* [the Basque language] will also have the character of official language in the Basque-speaking zones of Navarre. A Regional Law shall determine said zones.” In compliance, Regional Law 18/1986 of 15 December on *vascuence* (published in the *Official Gazette of Navarre* [BON] no. 154 of 17.12.1986 and subject to various amendments) determined the sociolinguistic zoning of the Chartered Community of Navarre on the basis of three territorial areas: Basque-speaking, mixed and non-Basque-speaking, in such a manner that the Basque language is official only in the “Basque-speaking zone.”

16 It is undoubtedly significant and relevant that the Committee of Experts, in its first evaluation report on the application of the ECRML in Spain (i.e. the 2005 report, corresponding to the initial monitoring cycle), included the following request: “The Committee of Experts encourages the Spanish authorities [...] to reflect on the possible need to provide appropriate protection to the mixed zone, in accordance with the provisions of Part III, particularly in view of the numerous measures which have already been adopted [...] It should be pointed out that this matter is independent of whether the language is recognised as co-official or not, a consideration which is only pertinent from the point of view of the domestic legal system” (paragraph 72) (underlining by the author). The Spanish authorities declined the request, arguing in said 2005 report that “an extension to the region of the mixed zone of the level of protection of the Basque language existing in the Basque-speaking zone, as suggested in the report of the Committee of Experts, would represent a modification of the system of protection of the Basque language recognised in the legislation of the Chartered Community of Navarre” (see paragraph K of Appendix II, comments made by the Spanish Government).

17 See the rights acknowledged in Title I of Regional Law 18/1986 of 15 December on *vascuence*: in the mixed zone, “All the citizens are entitled to use both the Basque language and Spanish to address themselves to the Public Administrations of Navarre” (Art. 17), although, contrary to what occurs in the Basque-speaking zone (Art. 10), the right to be attended to in the chosen language is not acknowledged; in the non-Basque-speaking zone, “The citizens are entitled to address themselves in the Basque language to the Public Administrations of Navarre, which may require from the interested parties a translation into Castilian” (Art. 18).

the region would, of course, be taken into account at all times and any action would consequently be taken gradually and progressively. Nevertheless, care would be taken to avoid any attitude that would hinder or be contrary to the effective protection of the Basque language in the whole region.

An illustrative example of the importance which the ECRML has had in the Chartered Community of Navarre is found in two regional laws which have partially amended the above-mentioned Regional Law 18/1986 on *vascuence*. These are Regional Law 4/2015 of 24 February and Regional Law 9/2017 of 27 June. Both laws draw on the contents of the ECRML and the evaluation reports of the Council of Europe and the Committee of Experts.¹⁸

As it is not the aim of this paper to make a detailed analysis of the implementation of the Charter in the Chartered Community of Navarre, I will simply limit myself to mentioning the most notable aspects. A quick look at the observations and conclusions included in the fourth evaluation report¹⁹ – the last report approved at the date of drafting this paper – allows us to discern the degree of compliance of the Chartered Community of Navarre with the Charter. In regard to the educational undertakings, the Committee of Experts considers them fulfilled and significantly emphasises as a positive measure Regional Law 4/2015 amending Regional Law 18/1986 on the Basque language, because it extends to all the publicly-run schools of the Chartered Community of Navarre the option of giving classes and studying in the Basque language regardless of the sociolinguistic zone. As the Committee of Experts points out, “in practice, it enables model D²⁰ to be introduced into the publicly-run schools of the non-Basque-speaking zone. The Committee of Experts praises the authorities ‘for this advance’” (paragraph 250). Where development is most lacking is in the judicial system (a problem not exclusive to the Chartered Community of Navarre), and shortcomings in terms of compliance have been observed in local-level administrative and public services provided by the peripheral central government as well as, albeit to a lesser extent, in regional and local services.

The Committee of Experts also underlines the need to improve cooperation between the Government of the Chartered Community of Navarre and the Basque Government, “particularly in the sphere of communications media, in regard to the area of reception of the Basque public television channel ETB” (paragraph K of the Conclusions chapter of the evaluation report). More specifically, in the sphere of the media, along with undertakings totally or partially fulfilled, there are two undertakings which continue to go unmet, as a result of which the Committee of Experts “strongly urges the authorities to guarantee the availability of at least one radio station and one television channel in the Basque language, and, if necessary, in collaboration with the Basque Autonomous Community” (paragraph 318). Paradoxically, just a few months after the publication of the fourth report by the Council of Europe in May 2016, the broadcasting of ETB (Euskal Telebista/Basque Television) in the Basque language in the Chartered Community of Navarre was suspended at the initiative of the Spanish Government’s Ministry of Industry, a decision which, although explained by the Ministry in technical terms relating to the distribution and organisation of frequencies, aroused a great wave of protests from different public institutions and all types of social agencies.²¹ At the present time, in 2018,

18 Regional Law 4/2015 of 24 February, partially amending Regional Law 18/1986 of 15 December on *vascuence* (BON no. 47, 10-03-2015), and which amends said Law with the objective of guaranteeing throughout the region of the Chartered Community of Navarre access to teaching “in” the Basque language, states in the preamble that “it undertakes to adapt and review the legislation which, in accordance with the undertakings signed by Spain within the framework of the European Charter for Regional or Minority Languages, must permit the Administration to attend the existing social demand in both the non-Basque-speaking zone and the mixed zone.” The legislator refers here to Article 8 of the ECRML. For its part, Regional Law 9/2017 of 27 June, amending the title and articles of Regional Law 18/1986 of 15 December on the Basque language (BON no. 130, 06-07-2017), states in the preamble that undertakes to change, in the title of Regional Law 18/1986 on *vascuence*, “the expression *vascuence* for ‘the Basque language’ [due to the] greater use of the latter in all types of organisms and in Navarrese society. Institutions such as the Council of Europe or the Committee of Experts [...] ratify this, ‘Euskera’ being the term which they use in their reports.”

19 The Committee of Experts approved the fourth evaluation report on 20 March 2015. Following the hearing period granted to the Government of Spain in order for it to submit, if applicable, observations in relation with the contents of said report by the Committee of Experts, on 20 January 2016 the Committee of Ministers finally adopted and published the agreement whereby it “recommends that the authorities of Spain take into account all the observations and recommendations of the Committee of Experts, giving priority to six specific recommendations.” Consequently, the Committee of Ministers adopted the fourth evaluation report of the Committee of Experts. The fourth report, finally approved on 20 January 2016, was the last one approved at the time this paper was drafted.

20 Model D consists of teaching entirely in the Basque language, with the exception of the subject of Castilian Language and Literature, which is taught in Castilian.

21 The Government of the Chartered Community of Navarre, presided by Uxue Barkos, directly opposed the measure adopted by the Ministry of Industry, as did the Basque Government, presided by Iñigo Urkullu. Among the initiatives that were adopted by different

the undertaking relating to the availability of radio and television channels in the Basque language is now being fulfilled.

Finally, two other observations made by the Committee of Experts warrant consideration. One says that “the total budget assigned to Euskarabidea (the Chartered Community of Navarre’s Institute for the Basque Language) decreased from 3,191,002 euros in 2010 to 2,318,934 euros in 2012 [...], which could have a negative effect on the protection and promotion of the Basque language in the Chartered Community of Navarre” (paragraph 105).²² This observation is interesting because the Committee of Experts implicitly underlines the importance of having sufficient resources allocated to the promotion of the Basque language. We must not forget that certain voices in the public arena argue that it is a waste to allocate resources to the promotion of the Basque language,²³ contrary to the concern expressed by the Committee of Experts. In another respect, in regard to the undertakings involving education, the Committee of Experts states that “the authorities are studying the introduction of English at all teaching levels, but this must not compromise the offer of the Basque language as a vehicular teaching language in accordance with the Charter” (paragraph K of the Conclusions chapter).

In summary, in accordance with the fourth evaluation report of the Council of Europe, it can be said that in the Chartered Community of Navarre, and more specifically in the Basque-speaking area, the level of compliance with the undertakings of Part III of the Charter by the regional and local institutions is high, although a few undertakings remain to be fulfilled and others, approximately fifteen, have only been partially fulfilled.

2 Implementation of and compliance with the ECRML in the Basque Autonomous Community

The process of implementing the ECRML in the Basque Autonomous Community has involved light and dark, as is natural in any social process which involves changing attitudes and habits that affect the structural elements of society. However, I want to clearly state from the outset that the light has undoubtedly prevailed over the dark. Today the situation of the Basque language in the Basque Autonomous Community is manifestly better than in 2001, the year the Charter entered into force in the Spanish State (see note 4 of the Sixth Sociolinguistic Survey), and the results of the fourth evaluation report to monitor implementation of the ECRML in Spain, published in January 2016 (the last such report approved and published to date), are notably more positive than those of the first evaluation report (published in 2005). The prevalence of light in this process can be observed both quantitatively (number of undertakings fulfilled) and qualitatively. Nevertheless, there has also been dark along the way, some of which relates to problems of a structural nature, and is basically related to the (in)action of State institutions. It is well known that, when it comes to overcoming situations of inequality – and dealing with language policies – inaction is a form of action that contributes to the strengthening of the *status quo*, that is, to the perpetuation of inequality.

social agencies, I would like to single out the one adopted by the NPLD by a unanimous vote of its General Assembly. Specifically, the presidency of the NPLD sent a letter to the Spanish Government authorities which, with all due respect, reminded them that the successive evaluation reports of the ECRML Committee of Experts had recommended the advisability of ETB broadcasts in the Basque language also being available in Navarre; and, considering that the suspension of the reception of ETB in Navarre contravened the spirit and the letter of the ECRML. The NPLD requested the adoption of the necessary measures to revert the decision on suspension. The initiative was brought to the attention of the Committee of Experts of the Charter and the Governments of the Chartered Community of Navarre and the Basque Autonomous Community.

²² It must be taken into account that the fourth report, which includes this observation, refers to the period 2010-2013. In the annual periods subsequent to 2015, under the direction of Regional Minister Ana Olló and the Managing Director of Euskarabidea, Mikel Arregi, the Euskarabidea budget has substantially increased.

²³ Let us study here two examples from the Basque Autonomous Community. One: the total disagreement expressed in June 2014 by representatives of constitutionalist parties in relation to the economic endowment (335 million euros over the three-year period 2014-2016) allocated by the Basque Government to the Strategic Agenda for the Basque language, considering it excessive, especially at a time of economic crisis. In June of the same year, the Basque PP [Partido Popular] submitted to the Basque Parliament a motion which did not prosper in the end, asking the government to withdraw said Agenda for the aforementioned reason. Two: in May 2014, the spokesperson of UPyD [Unión de Progreso y Democracia] in the Basque Parliament judged as “absolutely extraordinary and excessive quantities which could be considered unacceptable for ordinary citizens” the budgets executed by the Basque Government in 2012 for policies to promote the Basque language. See the records of meetings of the commissions of Culture, the Basque language, Youth Affairs and Sport (5-5-2014) and of the Plenary Session (20-11-2014) of the Basque Parliament, at www.legebiltzarra.eus. In any case, the economic evaluation of the promotion of non-hegemonic languages is a cause of controversy in many countries. See Trifunovska, Snezana: *La protección de las lenguas minoritarias en Europa: hacia una nueva década*, Vitoria-Gasteiz: Servicio Central de Publicaciones del Gobierno Vasco, 2011.

For a better understanding of what we have called a “process of light and dark in the Basque Autonomous Community,” it should be taken into account that the Charter must necessarily be understood in the context of the State, which is the body that has approved it, has brought it into force and has the responsibility of complying with it and ensuring its compliance.

2.1 Fundamental characteristics of the Charter affecting its implementation in the Basque Autonomous Community and the Spanish State

There is no doubt that the ECRML has had a positive impact on the social development of the Basque language, and this is due to various factors inherent to it. I would like to address here those I consider the most noteworthy.

The Charter is a legal instrument. Non-compliance with the Charter does not entail any legal or disciplinary consequences for the defaulting party. Notwithstanding, it has been endowed with an evaluation mechanism in the form of the supervisory action undertaken by the Committee of Experts, and this forms the basis for the recommendations made by the Committee of Ministers to the States, even though it does not provide for legal action to be taken in cases of non-compliance. However, by no means is this mechanism just a simple letter of political recommendations. The ECRML is the main international legislative instrument whose specific objective is to protect minority and regional languages²⁴ and foster their knowledge and use. It is therefore vital to emphasise the clearly juridical nature of the Charter. The Charter obliges the signatory States to take the necessary measures to comply with the undertakings adopted by them from the possible list in the Charter and requires them to develop their language policy on the basis of effective respect for the objectives and principles established therein. The ECRML is an international treaty which, having been ratified by the State, forms part of that State’s legal system, meaning that the State’s own legislation has to take full responsibility for meeting the minimum objectives and principles set forth in Part II of the Charter (Art. 7). It is important to remember that each State must comply with at least 35 of the 68 undertakings/measures established in Part III (Arts. 8-14). The Charter is, therefore, a legally binding regulation for the State which agrees to be bound by it. Although each State voluntarily agrees to be bound to the Charter, once it has done so the State cannot refuse to comply with it. Therefore, as far as the Basque language is concerned, it must be considered as highly positive the mere fact that a binding international regulation exists which acts as a protective umbrella to ensure that effective language policies for promoting use of the language are developed.

Ultimately, the Charter is the best and most advanced international instrument – the only one of a regulatory nature – for developing language policies that promote and encourage the use of minority and minoritised languages. One of its numerous achievements is to have placed the question of European linguistic diversity on the continent’s political agenda, allowing for a conception of diversity which is not limited to the official and hegemonic State languages, but rather one that embraces the other “historical,” “regional,” “minority” or “proper” languages at sub-state level.²⁵ This is something positive for the Basque language – as it is for the rest of the “other languages” – because it helps to open the gates of Europe to languages in similar situations, which should of course demand recognition in the European context. Like other languages of the Spanish State, the Basque language has a degree of recognition, albeit limited, in certain institutions of the European Union, thanks to the conclusions adopted by its Council in June 2005 at the request of the Spanish State.²⁶ Moreover, thanks to the Charter bringing the concept of “regional or minority” European languages into

24 The question of terminology is an important issue but it is not the object of this paper. The aim of this note is simply to place on record that terminology is directly related to the value given or denied to languages. The ECRML’s very name demonstrates that all the non-official languages of a State are considered to be “regional or minority” languages, while in reality it is possible to distinguish, for example, between “minoritised” and “minority” languages, “non-minority minoritised” languages, “non-hegemonic” languages, “official sub-state” languages, “unofficial sub-state” languages, “minority” languages, etc.

25 In any case, it should be borne in mind that the Charter has a limited territorial scope in Europe, because, even though it has been adopted within the Council of Europe, it has only entered into force in a little over half of the Member States, as we will discuss later.

26 The Council of the European Union (EU), in its conclusions of 13 June 2005, opened the door to a limited recognition of the use of the Basque language before the EU institutions, although the status accorded was nowhere near the status conferred on official languages of the EU. This “limited” recognition permits, among other things, communications drafted in the Basque language to be sent to certain EU institutions (such as the European Commission, the European Ombudsman and the Court of Justice of the European Union), the publication in the Basque language of a certain volume of EU legislation, and the use of the Basque language at meetings of the Council of Ministers, which are open to the participation of the ACs, as well as at meetings of the Committee of the Regions.

the European spotlight, there is a growing social recognition and valuation of them, including the Basque language, in the political and social map of Europe.

The principle of “positive discrimination (not linguistic discrimination) or compensatory and equalising action.” There is one factor that serves as the backbone of the ECRML and which must be highlighted given its importance in legitimising language policies aimed at protecting and promoting the use of “regional or minority” languages. This factor has indubitably been positive for actions promoting the Basque language, as it has lent them international support. It is the legal recognition of the principle of positive discrimination or compensatory action, as defined in Article 7.2.

It is a well-known fact, since it is so commonplace, that processes of social change that aim to reduce inequalities, in whatever sphere, frequently arouse attitudes of resistance, not only from those who occupy hegemonic positions, but also from those who suffer the inequality themselves as they tend to assume – unconsciously or with resignation – the values of this inequality. Processes of linguistic change are no exception. These attitudes of resistance are displayed in very different ways, even when it comes to the use of language in society. Here we will mention two: one consists in concealing “the problem of inequality,” that is, attempting to prevent the problem from being perceived or, in the event it is perceived, ensure that it not be seen as a “true problem”; the other resistance, occasionally deriving from the first, consists in blaming the victim, making the person who suffers the inequality – that is, the victim – the party to blame for the problem’s existence. For example, in the Basque Autonomous Community all too often we have heard emphatic questions like, “Why persist in using ‘that language,’ the Basque language, that only a part of the society knows, when we all understand each other perfectly well in the common language of the State? Using a language we don’t all understand, especially in the presence of someone who doesn’t understand it, is a lack of respect.” Similar utterances have been used repeatedly in the social context of the Basque language and have led to what can be classified as “victim-blaming.”²⁷ In the same family of linguistic prejudices and blame of the non-hegemonic language we find another question repeatedly asked in relation to the Basque language: “What do you prefer, a doctor who’s a good professional or one who knows Basque?” It is a false alternative that obviously cloaks a supposed incompatibility between being a good medical professional and knowing the Basque language; moreover, it denies the Basque language the right any language has to be an instrument of communication and a conduit of empathy in the relationship between healthcare staff and patient. Article 7.2 of the ECRML, however, adopts a stance that is the antipode of these attitudes of resistance since it legitimises language policies that treat unequals unequally, precisely with a view to advancing towards greater equality. The aforementioned article undoubtedly goes a long way to legitimise positive discrimination and censure the so-called “victim-blaming”, as can be observed in the following text taken from the article: “To eliminate [...] any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger its maintenance or development. The adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages.”

This positive discrimination or compensatory action is reinforced, moreover, in points c) and d) of Article 7.1, when it calls on the “policies, legislation and practice” of the States to address “the need for resolute action to promote regional or minority languages in order to safeguard them ... (and) ... the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life.”

The fact that an international and binding rule so clearly establishes the principle of positive discrimination bodes very well for the social development of the Basque language.

Coexistence between languages. The ECRML also advocates a framework of coexistence between the official languages of the State and the “other” languages, stating in its preamble that “the protection and

²⁷ In 2015 the Basque Government carried out a campaign specifically aimed at counteracting the influence of this prejudice among the Basque-speaking population, under the slogan *Eta txipa aldatuko bagenu?* [“Why don’t we change the way we think?”] (see references to the contents of this campaign in www.irekia.euskadi.eus; www.erabili.eus/zer_berri/berriak/1423742198; www.hezkuntza.ejgv.euskadi.eus; [www.telptailerrak.eus/ tag/aurreiritziak](http://www.telptailerrak.eus/tag/aurreiritziak)). See also BAZTARRIKA, PATXI. *Babel o barbarie. Una política lingüística legítima y eficaz para la convivencia*, Irun: Alberdania, 2009, pp. 317-318.

encouragement of regional or minority languages should not be to the detriment of the official languages and the need to learn them.” This concept is completely consistent with the mentality that has presided over the language policies laid down by Basque institutions for the normalisation of the use of the Basque language, contrary to certain interpretations which have incomprehensibly sought to disqualify these policies, attesting that their intentions (absolutely false) were akin to a “persecution of Castilian”.²⁸ Promoting the use of the Basque language does not signify in any way an attack on or marginalisation of Castilian, in spite of what is erroneously maintained by various hegemonistic prejudices, which are soundly refuted by Article 7 of the Charter.

An instrument of external evaluation. Finally, the Charter contains another factor which has been and continues to be beneficial for the social development of the Basque language: the monitoring or evaluation of its compliance, provided for in Articles 15 and 16. The evaluation reports and recommendations they contain, constitute the Charter’s most effective instrument. In the case of Spain and the Basque Autonomous Community, compliance has been monitored and evaluated every three years, although not always in a timely fashion, between 2005 and 2016, the years in which the first and fourth reports, respectively, were made public. The evaluation reports – a total of four at the time of writing this paper, the last one made public in January 2016 – are prepared by a Committee of Experts²⁹ and are based on the situation report submitted by the Government of Spain. They also take into account the information obtained and verified by the Committee through the monitoring visits made to Spain at which the Committee members met with representatives of the State and of the sub-state governments responsible for policies to promote the development of the “other languages.” They also met with representatives of the Basque Government, as the competent institution in questions of language policy in the Basque Autonomous Community, and of other public institutions involved in the matter – such as the Basque judicial authorities – and with non-governmental organisations involved in initiatives to promote the Basque language.³⁰ Each one of the four evaluation reports of the Committee of Experts was then given to the Committee of Ministers of the Council of Europe and completed with the Committee’s specific recommendations for the Spanish State.³¹ Each evaluation report has acted as an “external control” of the policies carried out to promote the use of the Basque language, and the external nature of this control is singularly beneficial for the language.

As often happens, and the practical implementation of the Charter is no exception, what is propounded and what is executed do not always coincide, at least not in full. Regardless, this regular monitoring and evaluation make the Charter a living and binding regulatory instrument, separate from any political changes that may occur in the States or in the sub-state areas in which the regional or minority languages are found. By requiring all the countries that have implemented the Charter to submit to regular monitoring, States are obliged to look at themselves in the mirror and allow themselves to “be investigated”. This process of self-reflection creates a positive motivation that lends value to the Charter because no party to an international treaty wants to be singled out as “non-compliant” or “poorly compliant”. Moreover, by conducting three-yearly monitoring processes, the Committee of Experts has gained recognition for the important function it carries out. At least in the case of the Basque language – the case best known to me personally – the Committee has carried out its task exhaustively and extensively, and has sufficient and recognised authority to carry out its assessment and propose recommendations to the Committee of Ministers based on a progressive and always up-to-date interpretation of the Charter.

28 See two illustrative examples of this criticism of the different processes of linguistic normalisation – not only of the Basque language – in Spain. One: the “Manifesto for a Common Language”, presented in the Ateneo de Madrid on 23.06.2008, the first paragraph of which declares that “there are growing reasons for concern in our country over the institutional situation of the Castilian language [...] a strictly political concern: it refers to its role as the principal language of democratic communication in this country.” Two: ESPADA, ARCADÍ: “Bilingualism is sometimes a mask used to hide the real intention of relegating Castilian to second place,” quoted in BAZTARRRIKA, Patxi, *Babel o barbarie. Una política lingüística legítima y eficaz para la convivencia*, op. cit., p. 104.

29 The Committee of Experts is composed of persons designated by the Committee of Ministers of the Council of Europe from names proposed by the States which have implemented the Charter. The recognised reliability of the different Committees of Experts in drawing up their evaluation reports has been fundamental for the prestige of the Charter.

30 In the monitoring visit to the Basque Autonomous Community for the fourth report, the Committee of Experts held a one-day working meeting with the heads of the Basque Government’s Language Policy Board (and of Elebide and HABE), as well as specific meetings with representatives of the Basque Government’s Department of Justice, the heads of the Basque Country Court of Appeal (TSJPV), members of the Bar Association of Bizkaia, representatives of EITB and heads of Behatokia, Euskararen Gizarte Erakundeen Kontseilua, Tokikom and the Aurten Bai Foundation.

31 The four evaluation reports for Spain can be consulted at www.coe.int/minlang.

Through this evaluation process, the regional governments responsible for language policy (for example the Basque Government) have been able to establish a relationship, albeit an inadequate one, with the Council of Europe. In addition to everything mentioned above, in the case of the Basque language, the evaluation report control and preparation processes are what have truly made it possible for the Council of Europe and the Basque Government to have direct contact with each other. Even though somewhat paradoxically, given the Spanish Government's lack of participation and on occasions in spite of it,³² this action of the Basque Government, with other Basque institutions has made it possible for the Spanish State to exhibit a high degree of compliance with the Charter's undertakings in regard to the Basque language. Similarly, the evaluation processes have permitted direct contact between the Committee of Experts and other public institutions affected by the Charter's obligations and with various social organisations whose mission is to stimulate the use of the Basque language in the social, cultural and economic life of Basque society. The final positive of the evaluation reports is that, in addition to identifying the shortcomings and points for improvement for better compliance with the Charter, they have served to draw the media's attention to the social development of the Basque language. This has been possible as a result of the considerations and recommendations made by the Council of Europe, which has also contributed, at its own level, to maintaining the Basque language on the Basque social agenda.

The level of coordination between the State Administration and the public authorities of regions with co-official languages (the Basque Government and the Governments of Navarre, Catalonia, Valencia, the Balearic Islands and Galicia), and between these and the Council of Europe, is insufficient. It would be impossible to finish the discussion on the importance and impact of the evaluation without mentioning the failures of the system that have been detected through the evaluation processes. I am not referring here to the non-compliances or partial compliances with the undertakings of the Charter: I am referring to the mechanisms in place to ensure that the Autonomous Communities (ACs) affected can participate in the actions stipulated in Articles 15.1 and 16.3. These mechanisms comprise, firstly, the preparation of definitive reports on State policies developed in accordance with Parts II and III of the Charter, which the State forwards to the General Secretariat of the Council of Europe, and, secondly, the possibility of making observations in the final report prepared by the Committee of Experts to be submitted to the Committee of Ministers for analysis and approval. This is a question of extraordinary importance, because it must be taken into account that the high level of compliance with the Charter in Spain is fruit of the action taken by the ACs, both because responsibility for "other" languages within Spain's plurilingual system resides mainly with them, and because the attitude of the Spanish State, in contrast with that of the authorities of the ACs in general, shows, shall we say, "little commitment" to complying with the two parts of the Charter.³³ This is a consideration that I firmly maintain in reference to the Basque language. However, the Spanish Ministry responsible for public administrations, in carrying out the actions listed in Articles 15.1 and 16.3, has totally or partially ignored, depending on the case and moment, the public authorities of the ACs in question, except in relation with the second round of monitoring. The Basque language and the Basque Government have been no exception.

An example of this failure to consult with the relevant authorities is that, in the initial monitoring round in 2002, Spain submitted its first report without having previously obtained the collaboration of the ACs with competence in language policy matters directly related with the obligations of the Charter. Consequently, the Basque Government conveyed to the Council of Europe, via its own channels, its point of view, information and evaluation concerning the Basque language. Fortunately, the procedure was radically different in the second monitoring cycle.³⁴ On this occasion, Government officials from the Spanish Ministry for Regional Policy

32 See the four evaluation reports of the Committee of Experts on compliance with the Charter in Spain in relation with the Basque language in the Basque Autonomous Community, and the corresponding recommendations of the Committee of Ministers. As will be explained in detail below, 95% of the undertakings "totally" fulfilled fall under the competence of the Basque public authorities, while the immense majority (86%) of the "partially" fulfilled undertakings are the responsibility of State institutions.

33 In reference to the Basque language, to avoid repetition, see note 32 above. For a general perspective that encompasses the entire State, observe in the four evaluation reports the reiteration, during fifteen years of supervision, of the observations of the Committee of Experts and the recommendations of the Committee of Ministers, which highlight structural shortfalls in relation to Articles 9 (Justice) and 10 (Administration) in areas under the authority of State institutions.

34 The Committee of Experts, in the conclusions of the second monitoring report (approved in 2008) stated that "The cooperation between the State authorities and the ACs with a co-official language has permitted the Spanish authorities to prepare a second periodical report which is more complete and detailed than the first" (See Conclusion C).

set in motion a procedure which took into consideration the ACs with another official language in addition to Spanish. This procedure entailed from the outset two parallel measures: a general report prepared by the State Administration and six reports from the ACs issued by the corresponding autonomous governments, including the Basque Government in relation with the Basque language in the Basque Autonomous Community, answering the questionnaire prepared by the Council of Europe. The State Administration then drafted a joint report on the basis of all these reports, which in turn was reviewed and improved with new data by the ACs. Several joint working meetings were held between the State Administration and the governments of the ACs as part of their coordination. All of this gave rise to the definitive report submitted by the State to the Council of Europe in April 2007, in the second monitoring round.

With the passing of time, not only has there been no improvement in the procedure of the second monitoring round, but also regrettably there has been a clear regression, as can be observed in light of what occurred with the fourth – and to date last – report, made public in January 2016. In the fourth monitoring round, in addition to preparing and transferring to the Ministry of Finance and Public Administrations the situation reports for the Basque language in the Basque Autonomous Community, Catalan in Catalonia and Galician in Galicia, the language policy heads of the Basque Government, the Government of Catalonia (*Generalitat*) and the Government of Galicia (*Xunta*) jointly addressed the Ministry of Finance and Public Administrations on two occasions, in October 2013 and June 2015, offering coordinated action and joint analysis in preparing the general report by the Spanish State. They specifically requested the possibility of participating in drawing up the observations for the Committee of Experts report before it was submitted to examination by the Committee of Ministers, at least for those considerations of the Committee affecting the competencies of the respective governments. The Ministry did not accept the offer from the three governments to collaborate nor their request to participate in this last phase immediately prior to the analysis by the Committee of Ministers.³⁵ This was in spite of the fact that, although the formal responsibility of communication with the Council of Europe for managing the international treaty lies with the State, the material responsibility for implementing the Charter in the regions where Basque, Catalan and Galician are spoken corresponds fundamentally to the public authorities of those regions.

In the specific case of the Basque language, moreover, the Ministry's refusal to allow the Basque Government to study the report of the Committee of Experts, and therefore allowing it to make its own observations, before submitting it to consideration by the Committee of Ministers resulted in one of the undertakings of Article 10 of the Charter (administrative authorities and public services) going out as “without conclusion,” because the State Administration did not forward the pertinent clarifications within the indicated timeframe (see paragraphs 404 and 405 of the corresponding evaluation report). The Basque Government, as it was not permitted to read the report of the Committee of Experts, was simply unable to provide the information the Committee would have needed to be able to reach a conclusion. Curiously, this is the only Charter undertaking considered to be “without conclusion” in regard to the Basque language. Specifically, it is the undertaking referring to the use of the Basque language in the Ertzaintza (Basque police) and Osakidetza (public health service). This example illustrates the inefficiencies which derive from the extremely important yet insufficient coordination, between the State Administration and the public authorities of the communities with responsibility over language policy. The Charter and its implementation would gain in efficiency if this coordination materialised, since, although it was inadequate in the fourth report, it proved itself to be perfectly feasible and efficient in the second monitoring round.

2.2 Scope of the undertakings in the Basque Autonomous Community and (high) level of compliance

The scope of the Charter in the State and in the Basque Autonomous Community. Linguistic diversity is a fact that has marked the history of Europe. It has been seen, in general, as a problem and impediment for

³⁵ On 16 March 2007 the Basque Government, the Generalitat of Catalonia and the Xunta of Galicia signed a protocol of collaboration in matters of language policy, by virtue of which they acquired numerous undertakings, including promoting the application of the ECRML in the Spanish State and requesting that the State Administration adopt an active attitude towards applying the Charter. Precisely within the framework of this protocol, and in relation with the fourth evaluation of the ECRML in the Spain, the three governments offered the Government of Spain their participation in the review phase of the Committee of Experts report before its submission to the Committee of Ministers. In July 2015 the Directorate-General for the Ministry of Finance and Public Administrations, responsible for the management of the ECRML, announced its rejection of the offer to the Language Policy Board of the Basque Government.

the strengthening of those “unique and uniform national identities” persistently sought by nation-states.³⁶ Attempts have been made to normalise what was and continues to be an exception, namely monolingualism, in spite of the unequal success of policies to create uniformity. The Spanish State is no exception. In Spain, the relationship between Spanish and the other living languages has been conflictive and was so long before Franco’s time. For centuries the powers of the State have opted for Spanish as the language of national unity and homogeneity. However, the intentions of linguistic homogenisation, with their origins in the times of the Catholic Monarchs, have proven to be largely a failed objective. For this reason, the Spanish Constitution of 1978 established the bases for the legal recognition of a plurilingual Spain. The Constitution opened the doors to the Statutes of Autonomy – including, and in the first place, that of the Basque Autonomous Community (1979), which establishes the Basque language as a co-official language in the Basque Autonomous Community – and the various normalisation laws (between 1982 and 1998). The Law on the normalisation of the use of the Basque language was passed in 1982 and overcame the appeal of unconstitutionality lodged by the Spanish Government. In total, six ACs declared co-official languages by means of their corresponding Statutes of Autonomy: the Basque Autonomous Community, Catalonia, Galicia, the Valencian Community, the Balearic Islands and the Chartered Community of Navarre (the latter limited the existence of a co-official language to a particular zone). In addition, the Statutes of Autonomy of the Principality of Asturias, Castile and León, and Aragon contemplated special protection for their languages. The Statute of Autonomy of Catalonia passed in 1979 was reformed in 2006, resulting in Organic Law 6/2006 of 19 July on the Reform of the Statute of Autonomy of Catalonia, section 6.5 of which declares the official status of the Aranese language in the Val d’Aran. It should be recalled that Article 3 of the Constitution rules that Castilian is “the official Spanish language of the State” and that “the other Spanish languages” will also be official in their respective ACs “in accordance with their Statutes.”

The scope of the Charter in the Spanish State, and in the Basque Autonomous Community in particular, is directly related with the legislation governing plurilingualism in Spain to which I have just referred. At the moment of ratification, Spain adopted the highest possible level of undertakings (it could have adopted only 35 elements of Part III instead of the 68 it adopted, the maximum number possible), but such a high level of commitment was limited to the ACs that already had a provision for co-official languages in their Statutes. The official status recognised in the six ACs, the respective autonomous laws on linguistic normalisation and the sector-specific legal developments registered in those communities in many ways provided the “regional” languages with a level of protection that was higher than those of the Charter. Consequently, the Spanish Parliament was obliged to opt for the maximum level of protection of the Charter, and it did so for the regions with co-official languages, but opted for a lower level of protection for the languages not officially recognised and with only a specific recognition in the Statutes of Autonomy.

It should be taken into account that the ECRML constitutes a binding legal minimum for all the public authorities of the States which have passed it into law. This means that each State’s own legislation must necessarily adapt to accommodate the provisions of the Charter. However, it does not establish a maximum, that is, it does not provide a ceiling that cannot be broken through and improved on by the language legislation and policies of the Spanish State and the ACs for the protection of the “regional or minority” languages subject to the protection of the Charter (Art. 4.2). The level of protection of the Basque language in the Basque Autonomous Community, as in the case of the other languages of the ACs with co-official languages, goes beyond the maximum possible degree of protection of the Charter. This is in essence the reality that explains to a large extent why the State adopted the totality of the Charter undertakings for the Basque Autonomous Community and the other five ACs – not doing so would have been incomprehensible in light of the legal protection already in force in those ACs – but it must be understood that this maximum level of commitment was adopted only for those regions with protection greater than that of the Charter, not for the State as a whole. Although of extraordinary importance, it does not fall within the scope of this paper to analyse the implications that the application of Part II of the Charter in relation with the other languages subject to its protection would have for the State and the sub-state public authorities concerned.

³⁶ See, in this respect, LEZERTÚA RODRÍGUEZ, Manuel: “El Convenio de Derechos Humanos y la necesidad de proteger las lenguas minoritarias”, in VARIOUS AUTHORS: *La protección de las lenguas minoritarias en Europa: hacia una nueva década*. Vitoria-Gasteiz: Servicio Central de Publicaciones del Gobierno Vasco, 2011. “The method of countering linguistic diversity in Europe has revolved around the preponderant interests of the modern nation-state, which include, as is well known, not only the defence of monolingualism as the means of consolidating national-mosaic entities in some cases, but also as a way of reinforcing a unique national identity.”

The body responsible for complying and ensuring compliance with the Charter in the State and in the Basque Autonomous Community. There is a question which we would be remiss in overlooking when referring to the scope of the Charter in the State and in the Basque Autonomous Community. The question is inevitable: Who is responsible for complying and ensuring compliance with the Charter? Is it or is it not the State? If it is, to what extent does the State's attitude conform to this responsibility?

As the Charter is an international treaty, State institutions are responsible for its approval, but when taking that decision in the case of Spain, they gave no consideration to the ACs, even though they nevertheless bear the obligation of complying with the Charter and also have legislative and executive competence in matters of co-official languages in their respective regions. In another respect, the Spanish Constitution's model of plurilingualism extends the official status of Castilian to the whole of the State but limits the official status of the "other" languages to their respective ACs. As such, the State's central institutions do not consider themselves affected by the co-official status of the other languages, and are – and have the vocation and the firm intention of continuing to be – monolingual.³⁷ This is a radical – and inappropriate, in terms of the defence of plurilingualism – conception of territorialised bilingualism which derives from the Constitution of 1978, according to which the legal obligations of bilingualism correspond almost exclusively (except on the websites and certain documents and forms of the ministries, and little more) to the institutions of the autonomous regions with co-official languages, while the State institutions are exempt from such obligations. In this respect we should recall the Spanish Government's failed attempt in its appeal of unconstitutionality against the Euskera Act of 1982, when it requested that the Constitutional Court (CT) declare the State Administration in the Basque Autonomous Community exempt from the obligations established in the regulations on the co-official status of the Basque language.³⁸ Even though thirty-six years have gone by, the spirit of that attempt, invalidated by the CT, sadly remains latent, and this has affected the implementation of the Charter in the Basque Autonomous Community.³⁹

The interpretation which the State tends to make of this regulatory model for plurilingualism consists, to put it graphically and bluntly, of this: "I'll take care of Castilian all over Spain, because the most normal thing is for the State institutions to operate in Castilian, and let the ACs take care of their respective co-official languages in their own regions."⁴⁰ This is an interpretation which, in general, has led the State, not to involve or concern itself with the other languages, but to adopt an attitude of being "the guardian of Castilian" in the face of the advance of "the other Spanish languages," an advance which it has perceived, moreover, as a threat to Castilian.⁴¹ The result is well known: a plurilingual State whose strictly central government and institutions act as if it were monolingual. An illustrative example of this can be found on the website of the Constitutional Court, on a page which makes available "the legal grounds of the most important rulings of the Court, in English French and German as well as Spanish," while the "other [official] *Spanish* languages" are simply invisible. This is something which is manifestly unacceptable in a plurilingual State and is incoherent with Article 3 of the Constitution, as the most basic way of affording effective and "special protection" of a language is allowing its use.

37 Here we can mention, among many other known examples, the legal impossibility of using the official languages provided for in Article 3.2 of the Constitution in the Congreso de los Diputados [the lower house of the Spanish Parliament]. On 22.03.2011 the proposal to reform the Regulations set out by the Parliament on the use of languages of an official nature in an Autonomous Community was rejected (see proceeding no. 410/000012 in www.congreso.es). The central State institutions lack their own rules permitting and regulating the use of the other official languages within them since they interpret Article 3 of the Constitution in a clearly restrictive manner.

38 Ruling No. 82/1986 of the Spanish High Court of Justice (STC) on the Euskera Act states that "the co-official status of the other Spanish languages is so with respect to all the public powers present in the autonomous region, not excluding the dependent bodies of the central administration and other State institutions in *sensu stricto*."

39 See paragraphs 396, 397, 398, 401 and 422 of the fourth report relating to Article 10 of the ECRML. In said paragraphs, the State Administration in the Basque Autonomous Community exhibits "partial" (not total) compliance with the Charter.

40 See, in www.congreso.es, Official Record of the Congress of Deputies, Plenary Session 22.03.2011, State Journal no. 233, pp. 11-14: declarations by the Speaker, Mr José Bono, and the spokesperson of the Popular Parliamentary Group, Mr Astarloa.

41 See for example, as it is representative of the type of argumentation used, the declarations of the spokesperson of the Popular Parliamentary Group, Ms Laura Garrido, in 2007, in a Plenary Session of the Basque Parliament regarding the language policy of the Basque Government: "This policy is based on the marginalisation of Castilian." (www.legebiltzarra.eus, Official Record, 8th Legislature, no. 58), or the declarations of Ms María Dolores de Cospedal and Mr Javier Arenas, minister and ex-minister of the PP, respectively, and leading figures of Spain's ruling party, in 2008, in reference to the language policy in Catalonia: <http://ecodiario.economista.es/politica/noticias/639169/07/08/EI-PP-promete-partirse-la-cara-por-el-castellano-ante-la-postura-de-la-Generalitat.html>

Taking the above into account, it can be understood – but not accepted – that the State’s central institutions offer resistance to complying with the objectives, principles and undertakings of the ECRML, and that their linguistic practice and language policies are far removed from what they should be in terms of those objectives and principles, which are set forth in a particular manner in the preamble and in Article 7, and also in Part III, and which, logically, the different levels of the State Administration and central institutions should not elude.

The Council of Europe’s Committee of Experts, ever since making its first evaluation report public in 2005, has repeated, report after report, that, “the responsibility for the implementation of the Charter in practice corresponds to a large extent to the Administration of the ACs. However, the Committee of Experts reiterates that the Spanish Government has the general and final responsibility of overseeing the implementation of the Charter” (see paragraph 63 of the second report and Conclusion J of the first report). In the fourth report, the Committee of Experts went one step further and also pointed out those undertakings that were having difficulty in being complied with and which had their origin precisely in the State: “... not only do the State authorities carry the ultimate responsibility of compliance with international treaties, but some undertakings set out in the Charter also fall under the direct remit of the State authorities. The most challenging undertakings in the Spanish context lie in the field of justice and peripheral state administration under Part III of the Charter” (paragraph 71). The sphere of justice, which resists compliance with the Charter, is under the competence of the State, as is stated by the Committee of Experts in its fourth report: it does so in a general manner in the introduction (“The Organic Law on the Judiciary is one of the most prominent obstacles to the fulfilment of Art. 9 of the Charter,” paragraph 4), and reiterates this explicitly in the evaluation corresponding to each one of the languages falling within the scope of Part III of the Charter (except that of the Aranese language). Similarly, the first and second of the six recommendations made by the Committee of Ministers to the Spanish authorities refer to justice, in matters which do not fall under the areas of authority of the ACs (specifically, reform of the legal framework and judicial staff reporting to the central powers).

In summary: in the case of the Basque language a paradox exists whereby the high level of protection of the Charter for which the State opted and the high level of compliance with the Charter, often heralded with undisguised satisfaction by the State, are a reality not so much due to the actions of the Administration and central institutions of the State but thanks to the practice and the policies developed by the Basque public authorities and Basque society as a whole in all the spheres of Part III of the Charter. Moreover, on more than one occasion, these authorities have had to sidestep obstacles placed in their path by the State itself. The truth is that the Basque language and the Basque public authorities have all too often had to proceed along the route laid out by the Charter and the Basque language legislation without the participation of the State, and occasionally “in spite of” the State. Something very similar has occurred in the case of other co-official languages in the State.⁴² Paradoxically, in regard to the ECRML, it can be said that the “true” State – which is the body obliged to comply with the ECRML as an international treaty – is not exactly the Spanish State but in reality the ACs concerned, in view of the hindrances put in the way by the State’s central institutions. In terms of compliance with this international treaty, the State is “less” state, and the Basque Autonomous Community and other ACs are “more” state.

Compliance with the ECRML in the Basque Autonomous Community is very high. A close analysis of the four evaluation reports on compliance with the Charter in Spain brings to light at least three issues: that the language policies developed by the Basque public authorities in the Basque Autonomous Community in recent decades correspond to the objectives and principles of the Charter; that between the first report and the fourth and latest report, the Basque public authorities have achieved a permanent progression towards compliance with the undertakings of the Charter in their sphere of competence; and that the difficulties posed for total compliance with the undertakings occur in matters which fall under the responsibility of the Administration and central institutions of the State. An assessment of the facts and the development reflected in the (only) four evaluation reports (2005-2016) issued on Spain to date indicates that the positive elements

⁴² See the introduction to the fourth report, in which the Committee of Experts says: “The undertakings which fall under the responsibility of the Autonomous Communities are by and large fulfilled” (paragraph 3); “In this fourth monitoring round, however, some significant problems as identified in the previous monitoring rounds still seem to exist. The legislation on the right to have proceedings before judicial and state administration bodies conducted in the relevant language has not been changed, despite the recommendations made by the Committee of Ministers” (paragraph 4); “A recurring problem is the lack of staff who are able to use the relevant languages in some areas of the State Administration” (paragraph 5).

(the light) observed during the monitoring process bear the seal of Basque society and its institutions, while the negative elements (the dark) bear, particularly the mark of the State. And once again, let us clearly state that the light manifestly prevails over the dark. Responsibility for the negative elements cannot be attributed to the Charter but, as the case may be, to the policies of the bodies legally responsible for complying with it.

All the reports affirm the positive evaluation in the opinion of the Committee of Experts of the language policies implemented in the Basque Autonomous Community. For example, as early as in the first report (2005) we find the statement, “The use of the Basque language in areas covered by the Charter has increased considerably in recent decades. This demonstrates the very positive effect of the linguistic policies in favour of the Basque language” (Conclusion H). And the latest report (2016) says that, “The Committee of Experts welcomes the efforts made to encourage the use of the Basque language” (paragraph 58).

The different planning and consensus instruments that have served and continue to serve as the basis for Basque language policies in these decades have also not gone unnoticed by the Committee of Experts, and have merited a positive consideration from it.⁴³ Some specific actions of the Basque Government have also been valued positively by the Committee of Experts, although in some cases they have been questioned. Let us see three examples in this respect. One is the creation of Elebide (the Service for the Defence of Linguistic Rights), which is considered a concrete example of “the strong commitment of the Basque authorities towards the linguistic development of Basque” (second report, Conclusion J). Another example is related to the language rights of consumers: the Committee of Experts, after valuing positively the protection of language rights established in Law 6/2003 on the Statute of Consumers and Users, “encourages the Basque authorities to adopt the relevant decree to implement the existing legal framework” (second report, paragraphs 621 and 623). Precisely in the same year this report was published (2008), the Basque Government passed Decree 123/2008 on the language rights of consumers and users. The third example refers to the Collaboration Agreement on Language Policy signed in 2007 by the Governments of the Basque Autonomous Community, Catalonia and Galicia (referenced in note 35). Specifically, the Committee of Experts “commends the ACs of Catalonia, Galicia and the Basque Country for the structured policies adopted with a view to revitalising and standardising their respective languages in their regions [...] (and) also commends these ACs for having signed a three year Cooperation Agreement to exchange and compare experiences in linguistic matters” (second report, Conclusion F). Meanwhile, the participation of the Basque Government in this agreement was questioned in Parliament by a political group in the Basque Autonomous Community.⁴⁴

Within the framework of the undertaking of transfrontier cooperation, the Committee of Experts has valued positively the collaboration reached between the Basque Government and Euskararen Erakunde Publikoa (the Public Office of the Basque Language) of France, including an economic contribution by the Basque Government in the form of a stable collaboration agreement, which was launched midway through the 2000s and was also questioned in Parliament.⁴⁵ In addition, since its first report (2005), the Committee of Experts has underlined the need for collaboration between the Basque and Navarrese Governments in the areas provided for in the Charter, and celebrated “the historic change”⁴⁶ produced in the relationship between the two communities in 2008, while encouraging them to take this cooperation to greater depths; and in the fourth report, it urged “the Navarrese authorities to ensure the reception of digital public television and radio channel programmes from the Basque Autonomous Community” (paragraph 318), which is now a reality.

43 In the last three evaluation reports (2008, 2012, 2016), the Committee of Experts refers in positive terms to the following strategy and planning documents: General Promotion Plan for the Use of the Basque language (EBPN), Future of Language Policy (Project 2005-2009), Euskara 21 and Action Plan for the Promotion of the Basque language (ESEP).

44 The Popular Parliamentary Group presented a “bill of objection” to the said Agreement between the Basque Government, the Generalitat of Catalonia and the Xunta of Galicia, because, among other reasons, according to the group’s spokesperson, behind the Agreement “exist interests and a policy based on the marginalisation of Castilian.” The bill of objection was rejected in the Plenary Session of 30.03.2007 with 61 votes against and 13 in favour (in www.legebiltzarra.eus, *Official Journal of the Basque Parliament*, 8th Legislature, no. 96, and Official Record no. 58).

45 The representatives of the PP and UPyD expressed their total rejection to the Basque Government contributing economically to the aforementioned inter-institutional cooperation. See www.legebiltzarra.eus, Basque Parliament, Finance and Budgets Commission, Official Record of 04.11.2015.

46 The Committee of Experts refers to the Letter of Intent which included collaboration undertakings in language policy in Navarre and the Basque Autonomous Community, which, after a long period of disagreement, was signed by the Basque Government and the Navarrese Government in January 2008.

It deserves special mention that in the fourth evaluation report the Committee of Experts considered that, unlike in the previous report, there was now full compliance with the undertaking of paragraph 3.a) of Article 10, referring to the public services provided by the administrative authorities or by other persons acting on their behalf, in which it is necessary “to ensure that the regional or minority languages are used in the provision of a service.” I say that this point deserves special mention because this matter has proved to be controversial, to the point that the Spanish Government has appealed to the courts of justice arguing, in general, that no linguistic requirement can be established in administrative contracting.⁴⁷ In any case, despite this general, negative approach from the central government, various local and regional institutions have been implementing this practice through different regulations, the analysis of which, along with that of various court rulings, falls outside the objectives of this paper. The Basque Government has been doing this in accordance with the regulation passed by the Governing Council in February 2006, and in April 2016 it passed, at the motion of the Basque Parliament, an Instruction containing a new regulation on linguistic criteria for administrative contracting, which could also be applied in other institutions. In the fourth report, the Committee of Experts, after recalling (paragraph 410) that in the third report it “encouraged the authorities to also insert into public tenders the obligation to use Basque,” points out that “regional provisions regulating the incorporation of language conditions in implementing Autonomous Administration administrative contracts have also been retained, requiring clauses to be included concerning the language conditions needed to provide the services required” (paragraph 411). Consequently, the Committee of Experts “considers that the undertaking is now fulfilled” (paragraph 412).

Finally, it should be noted that the Committee of Experts also emphasises the need to continue improving the use of the Basque language in the Basque police force and health service, which are dependent on the Basque Administration, although it recognises and “welcomes the progress made” (paragraph 405). This is the area of improvement that remains to be covered by the Basque Administration in the totality of the 68 undertakings of the Charter.

To sum up, it can be concluded that, barring error or omission, based on the detailed analysis of the fourth evaluation report of the Council of Europe and according to the information provided by the member of the Committee of Experts Fernando Ramallo,⁴⁸ of the Charter’s 68 undertakings, in the Basque Autonomous Community, 60 have been totally fulfilled, another seven have been partially fulfilled and there is one undertaking that is “without conclusion,” pending further information. The breakdown of this result shows that, of the 60 totally fulfilled undertakings, the vast majority (more than 95%) are under the competence of the Basque Administration, while of the seven that are partially fulfilled, six are the responsibility of the State and only one, that referring to health services, pertains to the Basque Administration. The undertaking “without conclusion” refers to the police force and health service of the Basque Administration. Therefore, in accordance with the fourth report, there is no “unfulfilled” undertaking relating to the Basque language in the Basque Autonomous Community. In the Spanish State as a whole, only Catalan in Catalonia and the Basque language in the Basque Autonomous Community are free of “unfulfilled” undertakings, and in both cases there are 60 totally fulfilled undertakings.

Consequently, compliance with the ECRML in the case of the Basque language in the Basque Autonomous Community is very high, but the contribution of the two Administrations concerned, the Basque and the central Spanish authorities, is profoundly unequal. It can be said that in the successive evaluation reports, and especially in the fourth and latest report (2016), the Basque Administration obtains “high marks,”⁴⁹

47 See, as examples, some rulings of the TSJPV (High Court of Justice of the Basque Country), all promoted by the General State Administration, against certain agreements adopted by some municipal councils and the Provincial Council of Gipuzkoa in matters of linguistic requirements in administrative contracting: STSJPV no. 3459/2015 of 6.10.2015 (referring to an agreement of the Town Council of Errenteria); STSJPV no. 2206/2016 of 21.07.2016 (referring to an agreement of the Town Council of Ibarra); and STSJPV no. 1590/2017 of 29.05.2017 (referring to an agreement of the Provincial Council of Gipuzkoa).

48 Fernando Ramallo, a lecturer at the University of Vigo, is the Spanish representative on the ECRML Committee of Experts. Within the framework of the Fourth Seminar on Plurilingualism in Spain, held on 21 April 2017 in the Senate, Ramallo gave a presentation on the status of the ECRML in the Spanish State, in which, along with reflections of special interest on the present and future status of the Charter, he provided quantitative information on the degree of compliance with the 68 undertakings of Part III in the six Autonomous Communities with co-official languages and in the Val d’Aran.

49 The use of the term “marks” must be understood in a metaphorical sense, because the evaluation of the Charter is not expressed in numerical qualifications but in the verification of undertakings that are “fulfilled,” “not fulfilled,” “partially fulfilled,” “formally fulfilled” or “without conclusion,” which are accompanied by recommendations.

while the Administration and institutions which are strictly of the Spanish State in the Basque Autonomous Community, far from obtaining a pass mark, continue to manifest practically the same problems since the first monitoring round commenced almost fifteen years ago.⁵⁰ What is worrying is that some of the reiterated partial compliances (or non-compliances) are of a structural nature. Resolving these issues would require a profound change of attitude by the State's central institutions, starting with accepting that the State's internal legislation – including the Organic Laws and its policies – must be adapted to the international treaties, which includes the ECRML, and that the State also has to develop active policies that promote the use of the Basque language in the areas in which it has authority in the Basque Autonomous Community. Complying and ensuring compliance with the law, preaching by example, is an essential requirement of an advanced democratic state. It is not enough, then, to “preach,” nor is it sufficient to declare oneself a “believer”: equitable management of linguistic diversity requires the State, above all, to be a “practising believer.”

The difficulties in compliance by the State Administration. The four evaluation reports of the Committee of Experts on the ECRML in Spain (2005-2016), including the final recommendations made by the Committee of Ministers of the Council of Europe, paint a good picture of the way in which implementation of the Charter in the Spanish State is advancing in relation to the State's various protected languages. The reports also look favourably on how policies directly affecting central State, Autonomous Community, regional, provincial and local administrations. As is natural, between one report and the next many of the considerations of the Committee of Experts undergo changes, because it is habitual for steps to be made towards greater and better implementation of the Charter. This has of course been the case in the observations referring to the case of the Basque language and the Basque Administration. However, and without prejudice to some minor nuance or change in the drafting style, all the reports, from the first to the fourth, invariably maintain the considerations corresponding to the partial compliance of Article 9 in their paragraphs 1.a), 1.b) and 1.c) (referring to the language of judicial procedures and the language proficiency of the Basque language of judges, magistrates, prosecutors and court clerks), and of Article 10 in the part concerning the use of the Basque language in the public services of the peripheral State Administration and the language proficiency in the Basque language of the staff of that Administration in the Basque Autonomous Community. Likewise, there is a constant repetition of the recommendations of the Committee of Ministers addressed to the Spanish State to overcome the problems that impede full compliance with the Charter in those areas. However, these recommendations by the Committee of Ministers addressed to the State have not met with any success, and in both cases there remains a great distance separating actual reality and compliance with the undertakings of the Charter. The repeated recommendations addressed to the State reveal the scarce (and occasionally zero) progress of the central institutions.⁵¹

Both problems (justice and the peripheral State Administration) are not exclusive to the context of the Basque language but are manifested in all the ACs with co-official languages, which are obliged to comply with Part III of the Charter. Already in the first evaluation report (2005), the Committee of Experts drew attention, in an extensive manner towards all the languages of Part III of the Charter, to “a clear gap between some of the undertakings chosen and the level of protection offered by the domestic legal framework and/or practice” (Conclusion C). Immediately afterwards, in the same Conclusions section of the report, the Committee of Experts identified the Administration of Justice (language of proceedings and language proficiency of the staff) and the State Administration with presence in the ACs (language proficiency of the staff) as areas which negatively affected compliance with Articles 9 and 10 (see Conclusions D and E of the First Report and Recommendations 1 and 2 of the Committee of Ministers). The situation has not varied, according to the fourth report of 2016 (see paragraphs 392, 397, 398, 401 of the report and Recommendations 1, 2 and 3).

In reference to the Administration of Justice, two problems can be distinguished. One of these problems is that judicial staff (judges, magistrates, prosecutors and court clerks) are not required to have any specific

⁵⁰ The four evaluation reports repeat the need for the State institutions to ensure compliance with Articles 9 (Justice) and 10 (Administration) in their spheres of competence. Note 42 must be summoned into mind here.

⁵¹ The General State Administration (“GSA”) has issued an announcement to cover 4,725 places in its general entities (see BOE no. 26 of 29.01.2018), of which 340 are to cover vacancies of the GSA in the Basque Autonomous Community, according to the Government Delegation to the Basque Autonomous Community. Knowledge of the Basque language is not required or guaranteed for any of these positions. This shortcoming contributes to consolidating the State's structural difficulties in complying with the Charter in its sphere of competence, to the point that it contravenes the reiterated recommendations of the Committee of Experts and the Committee of Ministers of the Council of Europe to ensure compliance with the undertakings arising out of Article 10 of the Charter.

linguistic profile.⁵² The Basque Government has promoted and organised, by means of specific agreements with the Ministry of Justice and the General Council of the Judiciary, Basque language classes for said staff to attend voluntarily,⁵³ but knowledge of the Basque language counts only as a “merit.” According to the fourth evaluation report, only some twenty judges and a similar number of prosecutors have language skills in the Basque language in accordance with the level required in the exercise of their profession. This is a field in which regulatory competence corresponds to the central institutions of the State and the role of the Basque Administration is limited merely to promoting the language.

On the other hand, the difficulty persists arising out of Article 231 of Organic Law 6/1985 on the Judiciary,⁵⁴ whose regulations are incompatible with the obligations set forth in paragraphs 1.a), 1.b) and 1.c) of Article 9 of the Charter. In this respect, the Charter establishes that in judicial proceedings of any type it will be ensured that the courts, simply “at the request of one of the parties,” conduct the process in the regional or minority languages, but Section 231 of the Judiciary Act, having determined in paragraph 1 that judges, magistrates, prosecutors, court clerks and other officials of courts and tribunals shall use Castilian, states in paragraph 2 that the courts “may also use the official native language of the Autonomous Community, if none of the parties objects on the grounds that due to their insufficient proficiency in this language their legal rights would thereby be prejudiced” (underlining by the author). It is obvious that Section 231 of the Judiciary Act, in limiting the right held by either of the parties to have a judicial proceeding conducted in the official native language of the Autonomous Community, totally contravenes Article 9 of the Charter, and it does so in spite of the fact that the Charter, pursuant to Article 96 of the Spanish Constitution, forms part of the Spanish legal system, and its internal legislation – that is, including the Judiciary Act – must adapt to the international treaty. Although this is an issue that falls outside the scope of this paper, I would dare to venture that this regulation of the General Council of the Judiciary also contravenes the symmetrical status of co-official languages which, as a consequence of Article 3.2 of the Constitution, is established in the Statute of Autonomy of the Basque Country and Law 10/1982 on the normalisation and use of the Basque language.⁵⁵

The Committee of Experts and the Committee of Ministers of the Council of Europe, in the fourth evaluation report, have once again urged the Spanish State to proceed to “amend the legal framework with a view to making it clear that the criminal, civil and administrative judicial authorities in the ACs can conduct the proceedings in co-official languages at the request of one party” (see Recommendation 1), and to “continue to implement legal and practical measures aimed at ensuring that an adequate proportion of the judicial staff posted in the ACs affected by the application of Article 9 of the Charter has a working knowledge of the relevant languages” (see Recommendation 2). In brief, what is being requested is the amendment of the aforesaid Section 231 of the Judiciary Act.

It is impossible not to call attention to the fact that the field of justice is the most deficient when it comes to implementing the ECRML. Let it be said clearly and without euphemisms: seventeen years after its entry into force in Spain, the international ECRML treaty, a legally binding piece of legislation, continues to be almost completely unfulfilled in the field of justice in matters which fall under the authority of the central government. And the fact is that this shortcoming goes hand-in-hand with the failure to fully comply with the legal regulations governing co-official languages set out by the ACs, which continues to exist in the

52 The absence of a requirement to know the co-official language arises out of the specific legal regulations governing the aforementioned judicial institutions. See the successive evaluation reports of the Charter: first report (paragraph 508, Conclusion D and Appendix II; comments by the Government of Spain on Conclusion D), second report (paragraph 577), fourth report (paragraph 388).

53 See the second report (paragraphs 576, 578 and 583) and the fourth report (paragraphs 388 and 390). See the General Language Normalisation Plan of the Legal Administration of the Autonomous Community of the Basque Country 2011-2020 (in www.euskadi.eus).

54 BOE of 2 July 1985. This has revised on several occasions.

55 From paragraphs 1 and 2 of the aforementioned Article 231 of the Judiciary Act (LOPJ) there derives a hierarchy between Castilian (“In all judicial proceedings, the Judges, Magistrates, Prosecutors, Court Clerks and other officials of Courts and Tribunals shall use Castilian, the official language of the State”) and the languages which are also official in certain Autonomous Communities (“The Judges [...] may use also the official regional language of the Autonomous Community, if none of the parties objects”): that is to say, the obligation of using Castilian contrasts with the conditioned possibility of using the Basque language (underlining by the author). It seems obvious that this breaches the absolute symmetry of the co-official status of Castilian and the Basque language established in Article 6 of the Statute of Autonomy and in Sections 3, 4, 5, 6 and 9 of Basic Law 10/1982 of 24 November on the Normalisation of the Use of the Basque language, according to which the Basque language is “equally” official as Castilian; that is to say, they are equally official in terms of use.

field of justice after thirty-nine years of the Statute of Autonomy and thirty-six years of the Law on the Normalisation of the Use of the Basque language.⁵⁶

In addition, going further into these difficulties, the aforementioned Judiciary Act, (pursuant to Section 110.2.h),⁵⁷ places another obstacle in the way of true compliance with Article 9 of the Charter, because, in limiting knowledge of an official regional language to a mere “merit” for the assignation of judicial posts (along with rulings which, moreover, reject the concept of a “preferential merit” being a determining factor for a post),⁵⁸ it poses an impediment to establishing obligatory linguistic profiles when assigning certain judicial posts in keeping with the sociolinguistic reality of the affected autonomous community. It would be precisely by establishing “preferred merits” as determining factors that adherence to Article 9 of the Charter would be ensured.

Recommendation 3 of the fourth report refers to the peripheral State Administration, and asks the State to “continue to implement legal and practical measures aimed at ensuring the adequate presence of the co-official languages in the State Administration at the level of the ACs.” This recommendation is based on the conclusion formulated by the Committee of Experts in which it “urges the Spanish authorities to pursue their efforts and to review the career and training structure in the State public administration, with a view to ensuring that an adequate proportion of the staff posted in the State Administration offices located in the Basque Country has the necessary command of the Basque language” (see paragraph 422). This is the other recommendation and observation repeated in the four reports, which once again reveals how the State Administration is hindering and making itself appear absent from any processes to comply with the obligations arising from the ECRML and the constitutional and statutory co-official languages in the Basque Autonomous Community. In fact, the State is “actively absent” in its compliance with some key obligations of the Charter.

It is striking that, after thirty-nine years of the Statute of Autonomy, the State Administration in the Basque Autonomous Community continues to refuse to adapt to the requirements arising from the recognition of co-official languages and, moreover, during this time it has taken actions that are inappropriate from a legal point of view (as has been established in various rulings of the Administrative Court of Donostia and the High Court of Justice of the Basque Country). These actions were intended to deny administrative and legal validity to documents received by the State Administration from local corporations simply because they were drafted solely in the official regional language, that is, in the Basque language, a language which is “equally” as official as Castilian.⁵⁹ It is sadly notable that, as has been said, a conception of official bilingualism persists within the State Administration, which, contrary to the State’s intentions, was rejected by the Constitutional Court in its Ruling no. 82/1986 on the Euskera Act. Here we are referring to the failed attempt to declare the State Administration in the Basque Autonomous Community exempt from complying with the obligations deriving from the recognition of co-official languages and according to this erroneous conception, compliance in this respect would only be required from the Basque administrations.

56 See in www.legebiltzarra.eus (File no. 11\10\07\02\0556) the document of 30.01.2018 of the Minister of Employment and Justice of the Basque Government, Ms María Jesús San José, “on the position occupied by the Basque language in the Legal Administration.” This document contains precise information on the number of judicial employees who certify having the necessary linguistic proficiency in the Basque language, the languages used by the judges and prosecutors, and the difficulties for conducting judicial proceedings in the Basque language.

57 Update published on 29.06.2013. See López BASAGUREN, Alberto: “Orden constitucional español y Carta Europea de las Lenguas Regionales o Minoritarias: algunos problemas de aplicación” (pp. 120-127), in VARIOUS AUTHORS: *La protección de las lenguas minoritarias en Europa: hacia una nueva década*, Vitoria-Gasteiz, Servicio Central de Publicaciones del Gobierno Vasco, 2011.

58 See the first report (paragraph 580) and López BASAGUREN, Alberto: “Orden constitucional español y Carta Europea de las Lenguas Regionales o Minoritarias: algunos problemas de aplicación” (pp. 120-127), in VARIOUS AUTHORS: *La protección de las lenguas minoritarias en Europa: hacia una nueva década*, *op. cit.*

59 In the course of 2015, Administrative Court no. 3 of Donostia issued various orders and rulings in which, on the basis of solid legal arguments that reserve the citizenry’s right of language choice and assign obligations alone to the public powers, dismissed, one by one, the appeals which the GSA had lodged against municipal agreements, with the intention of denying juridical effectiveness to documents drafted and submitted in the Basque language, without translation into Castilian, by the local authorities to the Delegation of the GSA to the Basque Autonomous Community. The Basque Government appeared as a co-respondent in four of the numerous proceedings. The GSA appealed to the High Court of Justice of the Basque Country (TSJPV), which, contrary to what it proclaimed in two rulings of previous years, passed in 2016 several rulings dismissing the appeals made by the GSA and confirming the appealed orders and rulings, sharing their legal and doctrinal rationale. See, for example, the following rulings of the TSJPV: no. 151/2016 of 27 April; no. 212/2016 of 25 May; no. 235/2016 of 2 June; and no. 419/2016 of 7 October.

Regrettably, all of this is coherent with the linguistic practice of some central institutions of the State which, forty years after the Constitution came legally into force, continue to avoid adhering to Article 3.3. Moreover, these institutions, in the same way as various public agencies, are practitioners of a language policy which, in certain matters, lags far behind the very Spanish Constitution. An illustrative example of how various public agencies fail to adequately apply Article 20.3 of the Constitution in the Basque Autonomous Community is that of TVE (Spanish Television), which has converted the Basque language into a simple language of greeting (*Arratsalde on for good afternoon*) in its regional news programmes, in spite of the fact that the aforementioned article of the Constitution rules that State-dependent media “shall respect the plurality of the various languages of Spain.”

3 The ECRML in the face of the new challenges facing linguistic diversity management, taking into account non-hegemonic and minoritised languages

Even though twenty years have passed since it came into force, it is safe to say that the Charter still has a long way to go.⁶⁰ In light of this and the advances made, we may ask ourselves about the challenges facing the ECRML from the perspective, not only of the Basque language, but also from that of the protection of linguistic diversity in the State and in Europe. I will avoid referring to proposals already formulated and argued by others, such as those in favour of taking sign languages into consideration, or reflections on the treatment of immigrant languages.

The limitations of the Charter should be taken into account but not without first reaffirming its value to the extent that it is, among other things:

- The only international legal regulation (treaty) that deals with the development of language policies to protect “regional or minority” languages and which is binding for the States that pass it into law (25 States).
- A regulation that has a monitoring instrument which, when implemented, does not only take into consideration the evaluation of the States concerned but also the points of view of a diversity of governments and institutional, political and social agents from the communities where the protected languages are spoken.
- A regulation that makes it possible to keep the flame of protection for linguistic diversity, extending also to the protection of state-less languages, alive in the European agenda.

Along with the Charter’s unquestionable value, let us also take into account its shortcomings and limitations. In the case of the Basque language, which I must take as a starting point, one limitation is the absence of the Charter in the Northern Basque Country (France) and its uneven implementation in the Chartered Community of Navarre and the Basque Autonomous Community.

In addition to being necessary, it is possible to improve the protection of language rights in Europe and to continue taking steps towards defining those rights and making them generalised and binding, even though we must be well aware that this is an objective that will require time, perseverance, alliances and consensus to achieve. The ECRML plays a fundamental role in this process, but it would be desirable for it to have a broader scope. The subject of the Charter is languages, not their speakers and their language rights, which are what truly have to be protected, because languages become tangible only if they have speakers. However, it is effective because the “recipe” it uses consists of promoting the use of languages. The Charter focuses on the European States: it is a “European” Charter, approved within the Council of Europe, but its final addressees are the States, not Europe as a pan-European space, not even the institutions of European governance. The “European” Charter, therefore, lacks “European” obligations that transcend State boundaries; the obligations of formal and practical protection of the regional or minority languages imposed by the Charter are obligations which are incumbent on States – and sub-state governments – in their spheres of action. It is therefore an international legal instrument which, rather than having a trans-state European agenda, makes the protection

60 Of the 47 States which form part of the Council of Europe, the Charter has been signed by 33 and has entered into force in 25, that is to say that 22 States (47%) remain which are resisting its entry into force. Of the 28 States which compose the EU, 17 have ratified the Charter and 11 (40%) continue not to do so.

of the “regional or minority languages” a matter of State. This approach limits its effectiveness, because true compliance with the objectives defined in the preamble of the Charter requires, in addition to State policies, pan-European language policies.

In this respect, it is fitting to differentiate the sphere of the Charter itself, that is, that of the Council of Europe, and the sphere of the European Union, that is, that of political and economic integration and a common European governance, which has a supra-state political and legal system that rests on different institutions. In this case, it falls to the Council of Europe to see that the signatory States ratify and comply with the ECRML, and to strive to get more Member States to sign the Charter. The governing institutions of the European Union (EU) should also define among the various policies and action programmes (political, economic, fiscal, environmental, security-related, immigration-related, etc.) a pan-European language policy aimed at promoting and preserving the EU’s own linguistic diversity.⁶¹ To this end, the Charter of the Council of Europe could be, among other things, a very useful reference for the EU, because, in this author’s opinion, the Charter is the best and most advanced international legal instrument for the protection of linguistic diversity in existence.

It is true, however, that these limitations are not always directly attributable to the Charter. In many cases they are a direct consequence of the shortcomings of the socio-political contexts of the States, in the face of which the Charter’s effectiveness is limited or even null in some cases.⁶² If we look beyond the ECRML and its sphere of implementation, even within the EU, the inadequacy of certain proclamations is evident. For example, proclaiming a “Europe united in diversity” or, as stated in Article 22 of the Charter of Fundamental Rights of the European Union, that “the Union respects cultural, religious and linguistic diversity” (“linguistic diversity” is understood to include regional and minority languages) does not reconcile at all with the fact that the EU’s political institutions leave the management of linguistic plurality in the hands of each State (except when referring to the official State languages used in the EU), as if the linguistic diversity of the EU (that which is recognised as a diversity not restricted to the State languages) were not “an EU matter” but “an internal matter of each State”. To make matters worse, the Spanish State does not even assume this diversity as “a matter of State” but as “a simple regional matter,” according to the Spanish Constitution’s interpretation of territorialised bilingualism, as this paper has already discussed. To sum up, returning to the Charter and its sphere of implementation, what I mean to say is that the ECRML cannot fully compensate for the absence of language policy in the European institutions and the Spanish State. This limitation becomes even more apparent when taking into account that, in a context of profound sociolinguistic asymmetries like those of Spain and Europe, the supposed “absence” of language policy implies in reality “having” a language policy, but not precisely one that is effective and beneficial for the “regional or minority” languages. The problem in this case does not so much lie with the ECRML as with the State and the European institutions.

As the ECRML is a treaty “between States for the States,” it does not include any mechanism that would enable it to be managed in an integrated and unitary, yet flexible, way on a European scale, one that is over and above the language policies of the Member States. In the case of the EU, an EU-wide language policy targeted at preserving its linguistic diversity beyond that represented by the official State languages must be part of the new scenario of European (re)construction that seeks to create a social citizen-focussed Europe. Europe can contribute to overcoming linguistic Jacobinism definitively by creating a new paradigm that is both plural (linguistic plurality is a tangible fact) and pluralistic (that is, neither hegemonistic nor seeking uniformity). In this respect, a challenge facing the Council of Europe is to work towards the Charter’s approval and entry into force in those of its Member States which continue to turn their backs on it. The EU should strive to help and support the Council of Europe in this task, focusing its efforts on the countries of the Union itself which remain outside the Charter, because all of them belong in turn to the Council of Europe. Following the recent publication of the European Commission White Paper, everything points towards a multi-speed Europe where those wishing to advance towards greater integration will be able to do so. In

61 See BAZTARRIKA, Patxi. *Babel o barbarie. Una política lingüística legítima y eficaz para la convivencia*, op. cit., pp. 82-99.

62 In the words of Stefan Oeter (see “Garantizar la Carta es eficaz en el orden legal europeo”, in VARIOUS AUTHORS: *La protección de las lenguas minoritarias en Europa: hacia una nueva década*, op. cit.): “The fact that the obligations executed under the said treaty (the Charter) are effective depends primarily on the sincerity of the commitments of the policy expressed in the instrument of ratification, and also depends on the quality of the corresponding domestic legislation and the effectiveness of the executive and judicial organs at the national level.”

this context it would be neither comprehensible nor acceptable that the States committed to “more Europe” in the political and social arenas have not also approved and brought into force the ECRML, which would be the prior step towards achieving unitary management of the Charter at European level. This is a political challenge of great importance.

Some States have resisted ratifying the Charter and, consequently, it has not yet come into force in those countries. However, public agencies and sub-state governments committed to linguistic diversity in those States could subscribe to the Charter, which would bind them to a system of policy evaluation.⁶³

If we now consider the Spanish State, I believe that the objectives and principles of the ECRML and the set of measures contained therein could constitute a perfectly valid basis for the Spanish State to take a step forward and develop Article 3.3 of the Constitution, abandon its political monolingualism and consequently embrace its linguistic complexity and its current territorialised (“regionalised”) bilingualism, making it possible, for example, for the State’s central institutions to actively adopt the ECRML. This could be one of the challenges for the ECRML for the coming years. The fact is that, in the sphere of languages, “official” Spain, that of the central institutions of the State, has a problem with diversity, and has a problem with “real” Spain and even with “legal” Spain. It has a problem with “real” Spain because, whether the supporters of the formula “one state, one language” like it or not, linguistic diversity is something that really exists.⁶⁴ It has a problem with “legal” Spain because the central institutions of the State continue to adapt insufficiently to the demands of co-official language status, revealing great difficulties in complying with the obligations imposed by the ECRML and autonomous legislation,⁶⁵ and even continue to fail to fulfil some of the obligations set out in the Constitution. I consider it a challenge for the Spanish State to begin to comply in the near future with the recommendations which the Committee of Ministers of the Council of Europe has formulated in the four evaluation reports in relation to justice and the peripheral State Administration.

Another challenge could be for the Spanish Government to assume “the overall and final responsibility for implementation of the Charter” (second report, paragraph 62), because “Spain remains responsible under international law for implementation of the treaties it has ratified” (second report, paragraph 65), bearing in mind that, “not only do the State authorities carry the ultimate responsibility of compliance with international treaties, but some undertakings under the Charter also fall under the direct remit of the State authorities” (fourth report, paragraph 71). It is perplexing that, contrary to the provisions of Article 11 of the Charter, the State would opt to turn a blind eye to the actions that for some years have impeded, as is well known, the good reception of EITB (Basque Radio-television) broadcasts in the Chartered Community of Navarre. In the second report, for example, “The Committee of Experts considers that the Spanish Government should have taken measures to overcome the persisting lack of coordination between the ACs which share the same or similar languages” (paragraph 66).

A desirable, and I believe achievable, objective is the structuring of formal common coordination and action between the central administration and the competent autonomous governments in language-related matters, with the aim of contributing to the fulfilment of Article 3.3 of the Spanish Constitution and the promotion by the State’s central institutions of positive language policies befitting a plurilingual State. In addition, a structured coordination of this type could form the basis for shared management of the ECRML, with the ACs participating directly in the process of monitoring the Charter in the State.

One would think that the Spanish public institutions would realise that they can no longer continue to ignore the request repeated in all four Council of Europe reports urging Spain to promote the idea of plurilingualism throughout the State, and must take positive action in this respect, especially in the country’s monolingual regions. In the fourth report, “The Committee of Experts asks the Spanish authorities to take resolute action in order to promote the visibility of all regional or minority languages through education and media” (paragraph

63 Taking into account that it corresponds solely to the States to sign and ratify the Charter, the proposed membership must be understood in strictly political terms related with the development of linguistic policies which have the Charter as their principal reference, obviously within the framework of the areas of authority of each entity and government.

64 47% of the population of the State reside in an Autonomous Community with another language apart from Castilian.

65 Linguistic diversity is enshrined in nine Statutes of Autonomy (including an equivalent law), either by means of the declaration of co-official languages or by means of the express recognition of certain languages.

184). Ignoring reality to the point of undervaluing “the other” is without doubt a source of intransigence and discrimination.

The plan to “take social action to promote plurilingualism” should also incorporate publicising the Charter and circulating its contents to the political, social, media, economic and educational agents of the Spanish State. Society at large in Spain has an extraordinarily low degree of knowledge concerning the Charter.

In regard to evaluation, I think various improvement measures can be implemented. The interpretation of the Charter will have to be flexible enough to adapt to the diverse realities of the so-called “regional or minority languages.” These languages, although they habitually and erroneously tend to be grouped together under the same label, have different realities and statuses that must be taken into account when assessing and evaluating their protection and vitality. In this respect, it would be desirable to define a system of indicators to gauge compliance with the Charter and the vitality of the different languages, adaptable to the reality of each one of them and paying special attention to the languages of Part II of the Charter, as these are highly vulnerable. Within the framework of this system of indicators, flexibility needs to extend to the evaluation of realities that, being new, are not contemplated in the Charter: for example, information and communications technologies, so that when evaluating implementation of the Charter’s undertakings in the media all current communication media are taken into account.

In another respect, based on the evaluation carried out over the last two decades, it would be beneficial to draw up a directory of good practices. It would also be advisable that greater effort be made to comply with the evaluation periods. According to Article 15, reports should be triennial. Consequently, the Spanish State should now have five reports, but only four have been issued. Five-yearly evaluations may be sufficient, but complying with an established period, whatever it may be, is important.

Finally, there is no question that a stable relationship between the Council of Europe and the ACs with competence in matters of language policy should be facilitated. The Council of Europe is composed of States, and I do not question in the slightest the communications between the Council and the ECRML Office and the central State. But there is nothing formally or legally unsolvable that can prevent what common sense dictates: a normalised and stable relationship between the competent administrations responsible for developing language policies and the Council of Europe, in such a manner that the ACs can participate formally in the communications between the State and the Council of Europe.

To conclude: preserving and revitalising a language involves two key figures: the speaker and the community of speakers. In them, in the use they make of the language, lies the key to its vitality. Rules are absolutely necessary, but they are not a panacea. In any case, individuals and communities of speakers need, among other things, a status that gives them solid ground and effective language policies that rest on a broad social and political consensus. To this end, without a doubt, the ECRML – in spite of its limitations – is an effective instrument, the most effective instrument in Europe today. It is for that reason that it must be cared for and extended; and its effectiveness is only furthered by the excellent work that has been done over the years by the various Committees of Experts.

BIBLIOGRAPHY

AGIRREAZKUENAGA, Iñaki. *Diversidad y convivencia lingüística: Dimensión europea, nacional y claves jurídicas para la normalización del euskara*. Donostia: Diputación Foral de Gipuzkoa, 2003.

ARZOZ, Xabier. “La política lingüística de los Estados miembros y el Derecho de la Unión Europea,” in *Revista Española de Derecho Europeo*, no. 52 (2014), pp. 11-48.

BASTARDAS, Alberto; BOIX, Emili (ed.). *¿Un Estado, una lengua? La organización política de la diversidad lingüística*. Barcelona: Octaedro, 1994.

BAZTARRIKA, Patxi. *Babel o barbarie. Una política lingüística legítima y eficaz para la convivencia*. Irun: Alberdania, 2009.

COBREROS MENDAZONA, Edorta. *El régimen jurídico de la oficialidad del euskara*. Oñati: Instituto Vasco de Administración Pública (IVAP), 1989.

JOAN I MARÍ, Bernat. *Català normalitzat en un món multilingüe*. Majorca: Moll, 2009.

MORENO FERNÁNDEZ, FRANCISCO; RAMALLO, Fernando. *Las lenguas de España a debate*. Valencia: UnoyCero Ediciones, 2013.

RUIZ VIEYTEZ, Eduardo J. “La ECRML, ¿un instrumento más para la protección de las minorías lingüísticas?: contenidos, límites y oportunidades,” in Euskara Kultur Elkargoa (ed.): *Carta Europea de las Lenguas Regionales o Minoritarias: una perspectiva sobre su aplicación*. Pamplona: EKE, 2003.

RUIZ VIEYTEZ, Eduardo J. “Lenguas y Constitución. Una visión del derecho lingüístico comparado en Europa,” in *Revista Vasca de Administración Pública*, no. 72 (2005), pp. 231-275.

UNAMUNO, Virginia. “La ECRML en el Estado Español: estrategias formales, ¿consecuencias prácticas?,” in Euskara Kultur Elkargoa (ed.): *Carta Europea de las Lenguas Regionales o Minoritarias: una perspectiva sobre su aplicación*. Pamplona: EKE, 2003.

URRUTIA LIBARONA, Iñigo. “Régimen jurídico de las lenguas y reconocimiento de la diversidad lingüística en el tratado por el que se establece una Constitución para Europa,” in *Revista de Llengua i Dret*, no. 42 (2004), pp. 231-271.

URRUTIA LIBARONA, Iñigo. “Konstituzio europarra eta hizkuntza aniztasuna,” in *Revista Vasca de Administración Pública*, no. 72 (2005), pp. 277-307.

URRUTIA LIBARONA, Iñigo. “Perfiles lingüísticos en la nueva oficina judicial: planificación lingüística en la administración de la Administración de Justicia,” in *Revista Vasca de Administración Pública*, no. 87-88 (2010), pp. 961-1003.

VARIOUS AUTHORS. *La protección de las lenguas minoritarias en Europa: hacia una nueva década*. Vitoria-Gasteiz, Servicio Central de Publicaciones del Gobierno Vasco, 2011. The original version of this book, which contains fourteen articles (by fourteen authors) of reflection and proposals on various aspects of the ECRML, was published by the Council of Europe in English and French, with the following titles: *Minority language protection in Europe: into a new decade* (EN) and *La protection des langues minoritaires en Europe: vers une nouvelle décennie* (FR), April 2010.

VERNET, Jaume; PUNSET, Ramón. *Lenguas y Constitución*. Madrid: Iustel, 2007.

Documents consulted

Consejo de Europa: *Carta Europea de las Lenguas Regionales o Minoritarias*, BOE no. 222, 15.09.2011.

Council of Europe: the documentation relating to the four evaluation reports on the implementation of the ECRML in Spain (2005, 2008, 2012 and 2016), which includes the situation reports on the languages in the Spanish State, the reports of the Committee of Experts, the observations of the Government of Spain and the recommendations of the Committee of Ministers of the Council of Europe: www.coe.int/minlang.