

## **Official Languages and Minority Languages: Issues about Their Legal Status through Comparative Law**

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### **1. Introduction**

The management of linguistic diversity is present today on the European political agenda and, in a large number of countries, it is a reason for debate within the national sphere. Concepts such as officiality and linguistic minority are increasingly settling down although, up to now, the complexity of the semantic and practical relations existing between them have not been studied thoroughly enough. The very same European Charter for Regional or Minority Languages tends to strengthen the confrontation between an officiality status and a minority status or regional nature (*carácter regional*) and, at the same time, it establishes a flexible application system of its provisions, which essentially underlines the complexity of finding commonly efficient categories within the so-called Linguistic Law.

In this paper, a framework for reflection according to European linguistic reality and the use of the officiality legal status will be offered. There are many issues that are still very much undefined in the legal and political aspects of the linguistic question. The apparently clear dichotomy between minority languages and official languages becomes all the more diffuse when the way of having access to officiality, the contents of the latter or the relations between it and people's linguistic rights are being increasingly questioned. To this aim, the analysis of Comparative Constitutional Law in the European sphere shall be basically used. In particular, the way of facing the linguistic issue in different European constitutions shall be studied, with a special emphasis on the officiality status. The reality shows the difficulty of establishing country categories and linguistic management models that could be officially approved in some states here and there. It must be taken into consideration that neither all constitutional systems incorporate the regulations of the linguistic issue nor all the basic provisions in this regard are included in their constitutional rules. In addition, apparently similar models of linguistic diversity management appear to be different in practice, either because they must be adapted to the different linguistic or institutional realities or due to the different meanings of the very same legal concepts that are employed.

At any rate, this paper intends to unveil the elements that are lacking rather than to propose alternative systems and, obviously, to highlight the fact that the theoretical and political reflection on Linguistic Law is one of the most urgent needs for modern political communities. This is the reason why the public management of cultural and linguistic diversity within a framework of respect for human rights seems to be one of the greatest challenges of politics in today's globalisation process.

### **2. Language, policy and Law**

#### *2.1. Language as an element of the state.*

At present, there are on our planet about 200 sovereign states<sup>1</sup> and it is considered that the number of living languages may be around 6,000. The disproportion existing between one figure and the

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<sup>1</sup> At present there are 191 member states of the United Nations, to which the City of the Vatican may be added, although it does not belong to this organisation.

other gives an initial idea of the difficulty that the public structuring regarding the use of languages in different states implies. Obviously, an approach based on the essentially monocultural and monolingual nature of the different states can neither correspond to linguistic reality nor to the cultural identity of the people and the groups making up mankind.

Nevertheless, the reductionist and uniforming view is the one that has largely become predominant in the building of modern states. Even today, as we are fully immersed in a globalisation process, most of the times the first thing one assumes is that the state is monocultural. Cultural identity is therefore understood incorrectly in the political sphere. The basic idea is that those people making up one political space share or long to share also one culture and one language. There is an underlying assumption according to which there is no political community without homogeneity; this is why the creation or maintenance of the latter becomes one of the aims of the former (De Lucas, 72).

The creation of the linguistic officiality status in the different states is strongly linked to this identity assumption. Political communities must reassert identity elements on which they intend to build and by means of which they aspire –more or less explicitly– to make their citizens uniform. In this sense, to make a language official implies a kind of public recognition of what its linguistic identity element is. But, at the same time, the idea of monolingual nation-states is a threat to the linguistic plurality existing on our planet (Kontra, 284).

While at the beginning of the Modern Age the main factor of community identity expression was the religion professed, from the nineteenth century onwards language started to stand out as the main feature of belonging to a specific group, which implies that different states progressively made explicit which language they adopted as a symbolic reference and as an everyday instrument; that is to say, which language they proclaimed as official. Indeed, although in contemporary society the religious sphere may be reduced to people's private sphere, political communities will not be able to avoid being linguistically defined, given the fact that language is a necessary element in the exercise of many of any state's functions. This uniforming process provokes the following situation: today, less than 4% of the world's languages have some kind of official status in any of the 200 existing states (Romaine, 1).

The importance of linguistic matters in our societies not only derives from their symbolic and instrumental function in the organisation of political communities. From the point of view of the individuals and of human groups, language is an essential component of one's own identity. Its loss, atrophy, inequality or recession cause personal and collective traumas and, more or less directly, social conflicts (Kontra, 281). In addition, the treatment of such an essential element of identity and personal development as language is directly related to the dignity of people and, therefore, to the respect for human rights.

## *2.2. Language as the object of the Law: Linguistic Law*

Today, the whole series of legal norms that regulate the use of languages in a specific political community are known as Linguistic Law. In practice, at any historical moment there have been provisions dealing with the use of languages in several public functions. Nevertheless, with the concept of Linguistic Law the existence of a specific area within the legal framework is being expressed, with its own systematic structure and guiding principles. As such, it is obviously a recent phenomenon. What is more, Linguistic Law is normally accused of having a poor structure and a high level of uncertainty (Fernández Liesa, 14), which questions its own consistency as an autonomous area of Law. After all, one of its main researchers calls it "Meta-legal Law" (Turi, 1990, 40), which is an intrinsically contradictory concept which partly reveals its still greatly conceptual inconsistency.

On the contrary, it is plain that the number of linguistic norms tends to increase quantitatively and qualitatively. In the last few decades, norms have been issued on the linguistic question in many countries that had not made them explicit before. At the same time, it may be observed that basic linguistic provisions are attaining a legal position and that they increasingly settle within Constitutional Law or even within constitutional texts. Indeed, in recent years, several European constitutions have incorporated or extended their linguistic provisions: France, Portugal, Switzerland, Finland or Belarus. In addition, from the analysis of the 48 constitutions of the European States<sup>2</sup> it may be concluded that there are only nine states that do not mention at all the linguistic subject in their constitutional rules: the Netherlands, Iceland, the Vatican, San Marino, the Czech Republic, Serbia and Montenegro, Denmark, Luxembourg and the United Kingdom. However, the last four countries include provisions regarding languages in other different basic political rules of their constitutions.

Regulating the linguistic issue through legal norms implies several methodological problems. One of them regards the limited capacity of the Law to have some influence on linguistic processes. These normally take place for social and economic reasons which very often can hardly be fought by legal means. Coercive sanctions themselves are scarcely efficient compared to social sanctions such as the loss of social prestige, the impossibility of developing a profitable commercial or work activity, or school failure. But, at the same time it cannot be forgotten that, beyond the direct effects that the Law pursues, legislation also has a symbolic value and a real influence on social values themselves, especially as regards the valuation of a specific language by the community. This is the reason why the regulation of language officiality is so important for the future of a language, even if it is never the only definitive element (Romaine, 2).

To this kind of problems the difficulty of reducing the complexity of the linguistic issue to legal categories must be added. Nevertheless, the linguistic issue very frequently is set within some parameters which can be objectified with difficulty. Thus, for instance, it is not always easy to define what the language of each individual is, given the convergence of personal, social and psychological factors which interact in regard to this subject. Indeed, it may be considered that one's individual language is: a) the parents' language (together or separately); b) the language spoken in the family; c) the language that he/she knows better; d) the language that he/she uses most in everyday life; e) the language with which he/she identifies himself/herself most; and f) the language with which other people identify him/her most (Kontra, 285).

When creating Linguistic Law, something similar happens with other equally important aspects. Thus, for instance, the relationship of linguistic variants between themselves is quite often a reason for disagreement and severe conflict. The distinction between language and dialect in respect to Law is not so much a merely scientific fact, but a political and symbolic matter. In fact, languages are very often dialects or linguistic varieties standardised and consolidated by the existence of a specific political community. Something similar happens with language names, which often lead to important political debates, up to the extent that in the field of Law it appears that, against what a linguist would accept, the language name is what defines the language. Even the different signs or alphabets in which languages are written may lead to controversial debates or to the legal creation of new differentiated linguistic realities. In fact, all this proves that the Law, in addition to facing the enormous difficulties derived from these and other complex realities, also acts on them, not only hiding some of them but even creating new linguistic realities.

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<sup>2</sup> As far as this paper is concerned, Europe includes the 45 member states of the Council of Europe (therefore, countries such as Turkey, Georgia, Armenia and Azerbaijan) together with Monaco, the Vatican and Belarus.

### 3. European languages in Comparative Constitutional Law

#### 3.1. *The legal and constitutional regulation of languages in Europe.*

The analysis of Linguistic Law from the perspective of Comparative Constitutional Law is not a methodological novelty. Outstanding authors in this field such as De Varennes (1996), De Witte (1986), Milian i Massana (1994), Pizzorusso (1993), Turi (1990) or Vernet (2003) have worked on this approach, although sometimes their surveys refer rather to partial aspects of the linguistic sphere or to comparisons between some especially relevant specific models. When drawing more general conclusions regarding the problems and reflections that Linguistic Law must deal with in the future, a global comparative method becomes necessary, a method in which not only the states with more advanced or progressive legislations are taken into consideration, but also and especially those that have other types of models. Obviously, in this approach, the limitation of the study to the field of Constitutional Law constitutes a methodological restriction; however, at the same time, the study of this legal sphere seems to be enough in order to present comparisons between a large number of countries.

As pointed out above, once having analysed the constitutions of the 48 European states, only 9 countries do not mention at all the linguistic subject in their constitutional norms, out of which 4 partially regulate this subject in other rules of Constitutional Law<sup>3</sup>. As to the 4 remaining states, 3 of them (Iceland, the Vatican and San Marino) may be considered as very small countries and with an almost uniform sociolinguistic structure. This corroborates the fact that almost all European states regulate the linguistic issue in their basic constitutional provisions in one way or another.

When focusing on the linguistic provisions that explicitly appear in the written constitutions of the other 39 states, a classification of them may be established according to their contents, which in turn creates 10 different groups of rules in European Constitutional Law:

- a) **Linguistic declarations:** Under this title the express proclamation of the legal status of one or several languages is to be included. In no case do the declarations include the contents of such status, but its mere nominal proclamation. In most cases, the declaration includes the names of the languages referred to, but there are declarations that refer in a generic way to a list of languages that will have to be specified later on. The next section deals with the subject of the typology of these constitutional declarations.
- b) **Non-discrimination clauses** These are the provisions including language in the reasons that prevent discrimination or proclaiming the equality of all individuals or citizens. It is the most frequent type of provision in European constitutions<sup>4</sup>.
- c) **Knowledge requirements:** These are the norms expressing the requirements regarding the knowledge or the study of a specific language (the official one) that are compulsory for

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<sup>3</sup> At this point, the case of the United Kingdom should be clarified. Since this country does not have a classical written Constitution, it may be placed together with the states that do not make any references to the linguistic subject in their Constitutions. Nevertheless, this is only partially true, for the United Kingdom does have a Constitution and several parts of it are written regulations. Among them, there is the 1998 Government of Wales Act, Article 47 of which mentions the equality of the legal status of Welsh and English. This provision could therefore be regarded as being included in the written part of the British Constitution; this is why the United Kingdom could have been included in the main block of European countries.

<sup>4</sup> The following articles of the Constitutions of these countries are clauses of this type: Albania (18), Germany (3), Armenia (15), Bosnia-Herzegovina (2), Azerbaijan (25), Cyprus (28), Estonia (12), Slovakia (12), Croatia (14), Finland (6), Greece (5), Georgia (14), Hungary (70), Italy (3), Lithuania (29), Macedonia (54), Moldavia (16), Sweden (8), Portugal (13), Poland (233), Romania (4), Russia (19) and Turkey (10). The Constitution of Austria includes a similar clause in its Article 14 but it is limited to the sphere of the right to education.

every citizen (Article 3 of the Spanish Constitution, Article 42 of the Turkish Constitution<sup>5</sup> and Article 36 of the Bulgarian Constitution) or for those that may hold some specific positions or develop some specific public functions<sup>6</sup>.

- d) **Recognition of linguistic rights:** These are the provisions expressing the linguistic rights that some specific groups of people or the individuals that belong to them must be granted. Normally, these constitutionally foreseen series of rights exist in relation to non-official languages and to the members of national or ethnic minorities<sup>7</sup>, although in some cases they may include all individuals<sup>8</sup> or all citizens<sup>9</sup>. The rights usually considered in these lists are the following:
- a. The right to freely use one's own language<sup>10</sup>
  - b. The right to preserve one's linguistic identity<sup>11</sup>.
  - c. The right to be educated in one's own language<sup>12</sup>.
  - d. The right to use one's own language in the communication with some specific institutions<sup>13</sup>.
  - e. Other rights<sup>14</sup>.
- e) **Linguistic guarantees** This name is used for the clauses that foresee the need of linguistic assistance in the cases in which a prosecuted or arrested person does not know the language in which the lawsuit against him/her is brought<sup>15</sup>.
- f) **Norms of institutional use:** These are the provisions in which the linguistic regime of a specific public institution is referred to<sup>16</sup>. This section includes the clauses regulating the semantic or hermeneutic differences between different official linguistic versions<sup>17</sup>.
- g) **Promotion and protection clauses** These are the constitutional declarations in favour of linguistic pluralism or the protection and conservation of some specific linguistic realities<sup>18</sup>. In turn, the latter may allude to the majority or state language<sup>19</sup> itself or to minority<sup>20</sup> or non-

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<sup>5</sup> In this case, it limits itself to the language of instruction in Turkish education (for all Turkish citizens), expressly forbidding the use of any other language different from the official one.

<sup>6</sup> Constitutions of Ukraine (art. 103 and 148), Norway (Art. 92) and Moldavia (Art. 78).

<sup>7</sup> This is the case of the Constitutions of Albania, Armenia, Slovakia, Croatia, Hungary, Ukraine, Estonia, Lithuania, Poland, Macedonia, Romania, Latvia, Sweden and Ukraine. The constitutional texts of Macedonia and Croatia use the term "nationalities".

<sup>8</sup> Constitutions of Russia, Slovenia, Azerbaijan and Belarus.

<sup>9</sup> Constitutions of Bulgaria, Georgia and Moldavia.

<sup>10</sup> Constitutions of Russia (Art. 26), Latvia (Art. 114), Poland (Art. 35), Hungary (Art. 68), Belarus (Art. 50), Georgia (Art. 38), Croatia (Art. 15), Slovenia (Art. 61) and Azerbaijan (Art. 45).

<sup>11</sup> Constitutions of Romania (Art. 6), Moldavia (Art. 10), Macedonia (Art. 48), Albania (Art. 20) and Croatia (Art. 15).

<sup>12</sup> Constitutions of Ukraine (Art. 53), Romania (Art. 32), Macedonia (Art. 48), Hungary (Art. 68), Albania (Art. 20), Slovakia (Art. 34), Estonia (Art. 37), Azerbaijan (Art. 45), Bulgaria (Art. 36) and Belarus (Art. 50).

<sup>13</sup> Constitutions of Slovakia (Art. 34) and Estonia (Art. 51).

<sup>14</sup> Rights of political participation, to maintain relations with other linguistic communities, to foster one's own language... Constitutions of Lithuania (Art. 37), Poland (Art. 35), Sweden (Art. 2), Hungary (Art. 68), Croatia (Art. 15), Slovakia (Art. 34), Slovenia (Art. 64), Armenia (Art. 37) and Albania (Art. 20).

<sup>15</sup> Constitutions of Albania (arts. 28 and 31), Cyprus (arts. 11, 12 and 30), Estonia (Art. 21), Slovakia (Art. 34), Croatia (Art. 24), Georgia (Art. 85), Lithuania (Art. 117), Moldavia (Art. 118), Romania (arts. 23 and 127) and Moldavia (Art. 35).

<sup>16</sup> Constitutions of Cyprus (several articles), Estonia (Art. 52), Spain (Art. 20.3), Finland (Art. 51), Ireland (arts. 18 and 25), Malta (Art. 5) and Belgium (many articles).

<sup>17</sup> Constitutions of Cyprus (arts. 3.6 and 180), Ireland (Art. 25.6) and Malta (Art. 75).

<sup>18</sup> Constitutions of Spain (Art. 3), Russia (arts. 29 and 68), Switzerland (Art. 116) and Azerbaijan (Art. 21).

<sup>19</sup> Constitutions of Azerbaijan (Art. 21), Portugal (Art. 9), Romania (Art. 7) and Ukraine (Art. 10).

official<sup>21</sup> linguistic varieties. These provisions constitute the legal basis for future policies and regulations regarding naturalisation or promotion and positive action in favour of linguistic minorities.

- h) **Norms of competence distribution:** this group includes the provisions that define which is the institutional sphere that is fundamentally responsible for linguistic policy in relation to all or some of the languages spoken in the state<sup>22</sup>.
- i) **Legislative references** These are the constitutional provisions that explicitly refer to a later norm (usually of a legal type), to the regulation of the legal regime of languages or to some specific partial uses of them<sup>23</sup>.
- j) **Other provisions<sup>24</sup>:** They include other provisions related to linguistic issues which cannot be easily classified under any of the previous categories (the constitutions of Greece<sup>25</sup>, Romania<sup>26</sup> and Turkey<sup>27</sup>).

### 3.2. The categorisation of languages in Comparative Constitutional Law.

This section focuses on the study of the constitutional provisions above referred to as linguistic declarations. From them a classification of the legal categories established in different European countries in regard to languages may be obtained, which may be in turn completed with those established by some states in other relevant regulations but which are not found in their constitutional texts.

Firstly, it must be recalled that 32 European states have included a linguistic declaration in their constitutions<sup>28</sup>. The categories employed that derive from the comparative analysis of these constitutions and of other important legal norms are the following:

- a) **Official language:** This category is explicitly included in the constitutions of 22 states: Albania (Art. 14), Austria (Art. 8), Andorra (Art. 2), Belarus (Art. 17), Bulgaria (Art. 3), Cyprus (Art. 3), Croatia (Art. 12), Slovenia (Art. 11), Slovakia (Art. 6), Spain (Art. 3), Estonia

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<sup>20</sup> This is how it happens in the Constitutions of Finland (Art. 17 in regard to the Sami language), Norway (Art. 110 in regard to the Sami language), Switzerland (Art. 70.5 in regard to Italian and Rhaeto-Romanic) and Italy (Art. 6 in regard to all the linguistic minorities of the Italian territory).

<sup>21</sup> This is the case of the Constitutions of Moldavia (Art. 13) and Ukraine (Art. 10) in regard to Russian.

<sup>22</sup> Constitutions of Spain (Art. 148.1.17), Switzerland (Art. 70.2), Russia (Art. 68.2) and Ukraine (Art. 138.8).

<sup>23</sup> Constitutions of Belarus (Art. 50), Bulgaria (Art. 36), Estonia (Art. 52), Belgium (several articles), Slovenia (Art. 62), Slovakia (arts. 6, 26 and 34), Finland (Art. 122), Ireland (Art. 8), Luxembourg (Art. 29), Macedonia (Art. 7), Moldavia (arts. 13 and 35), Romania (Art. 32), Ukraine (arts. 10 and 92) and Turkey (Art. 42).

<sup>24</sup> Here formal or procedural clauses have not been taken into consideration, such as, for instance, the final provision of the Spanish Constitution, which establishes the publication of the constitutional text in the "other languages of Spain".

<sup>25</sup> Article 3 of the Greek Constitution establishes that the text of the Holy Scripture must remain unaltered and that any translation of it must be approved by the autocephalous (self-headed) Orthodox Church of Greece.

<sup>26</sup> Article 148.1 establishes a hard-and-fast clause –or intangibility clause– that affects among its contents the official language declaration, thus making the linguistic declaration of Romania become the most strict one on the Continent in legal terms.

<sup>27</sup> Article 134 of the Turkish Constitution regulates the creation and the main functions of the Atatürk Cultural Institute, which fulfils the functions of promotion and fostering of the Turkish language.

<sup>28</sup> The 16 states that do not include any linguistic declaration in their Constitutions are Germany, Bosnia-Herzegovina, Denmark, Greece, Hungary, Italy, Luxembourg, Iceland, Norway, the Vatican, San Marino, the Czech Republic, the Netherlands, the United Kingdom, Sweden, and Serbia and Montenegro. However, in the cases of Luxembourg, Denmark, Bosnia-Herzegovina, the United Kingdom and Serbia and Montenegro, there are linguistic declarations in other regulations of Constitutional Law.

(Art. 6), Ireland (Art. 8)<sup>29</sup>, Latvia (Art. 4), Liechtenstein (Art. 6), Malta (Art. 5), Macedonia (Art. 7), Monaco (Art. 8), Portugal (Art. 11), Poland (Art. 27), Romania (Art. 13), Switzerland (Art. 116) and Turkey (Art. 3).

- b) **State language**: This category is recognised in 6 European constitutions: Armenia (Art. 12), Azerbaijan (Art. 21), Georgia (Art. 8)<sup>30</sup>, Lithuania (Art. 14), Russia (Art. 68) and Ukraine (Art. 10).
- c) **National language**: This formula is employed in 6 constitutions: Finland (Art. 17), Moldavia (Art. 13), Ireland (Art. 8), Liechtenstein (Art. 6), Malta (Art. 5) and Switzerland (Art. 4). These last four countries use it in addition to the official language formula. The official language concept is also incorporated in the Constitutional Law of Luxembourg through its Law on Languages of 1984. All the same, this term appears in Article 138 of the Constitution of Ukraine when referring to the competencies of the Autonomous Republic of Crimea, but not in the form of a declaration.
- d) **Language of the Republic**: It is the formula employed in Article 2 of the present French Constitution.
- e) **Main language**: This concept is used in the laws that regulate the respective autonomies of the Faeroe Islands and Greenland, within the Kingdom of Denmark, and in regard to the native languages of both territories.
- f) **Own language**: As in the case above, this concept is used in the sphere of the regulations established by some autonomous communities within the Kingdom of Spain and in regard to the languages that are native to these autonomous territories. These are the Statutes of Autonomy of the Basque Country, Catalonia, Galicia, Valencia and the Balearic Islands. This concept also appears in the development legislation of Catalonia in regard to Aranese<sup>31</sup> and in the linguistic legislation of Navarre, in this case in relation to both Euskera (Basque) and Castilian<sup>32</sup>.
- g) **“Levelled” language** (*lengua “equiparada”*)<sup>33</sup>: This category includes several formulations that refer to the fact that one specific language will be granted the same legal status as another language mentioned before. In all the cases observed, it implies an indirect recognition of the official nature of a specific language in all or part of the state territory. This formula appears in the following norms:
  - a. Article 17.2 of the Constitution of Belarus, which puts the legal status of Russian and that of the official language on the same level<sup>34</sup>.
  - b. Article 47 of the Law of 1998 on the Government of Wales, which puts the legal status of Gaelic and that of English in this country on the same level.

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<sup>29</sup> Article 8 of the Irish Constitution differentiates between “first” and “second” official language.

<sup>30</sup> The same category appears in the Constitution of the Autonomous Republic of Abkhaz, but in regard to Russian and not to Georgian that is the language proclaimed official state language by the Constitution of Georgia.

<sup>31</sup> Article 2.1 of the Law 16/1990 of 13 July on the special regime of the Aran Valley. The same precept establishes the officiality of this language in the Valley.

<sup>32</sup> Statutory Law 18/1986 of 15 December on the Basque Language, Article 2.1.

<sup>33</sup> “*Equiparada*” could be the most suitable Castilian term to translate the Italian word “*parificata*”.

<sup>34</sup> A constitutional reform along very similar lines to those of the Constitution of Belarus has been proposed in Moldavia, with the aim of officially putting the status of Russian and that of the “national” language on the same level.

- c. Article 99 of the Special Statute of the Trentino-Alto Adige Region<sup>35</sup>, which establishes that the German language will “be in parity” (“*parificada*”) with Italian in the Province of Bolzano.
  - d. Article 38.1 of the Statute of Autonomy of the Aosta Valley<sup>36</sup> that establishes that French and Italian are in a situation of parity in this autonomous region.
- h) **Language of interethnic relation:** This term appears in the Constitution of the Autonomous Republic of Crimea in regard to Russian. Until the 1996 reform, this category also appeared in the Constitution of Belarus in regard to this very language. It is a formulation that has been used profusely in the former Soviet Union that gave Russian a privileged status in the different Soviet Republics. Today, beyond the existing reality, it is a concept that has been almost banished from Comparative Constitutional Law.
- i) **Language of the autochthonous population:** This is the formula used in the Law of Languages of Latvia in regard to the almost extinguished Liv language. Since there are almost no indigenous populations in Europe, similar terms do not appear in other constitutional regulations; the same happens with Sami, although the Finnish Constitution recognises this group as an indigenous people in its Article 17.3.
- j) **Other indirect express declarations:** Although it is not a direct declaration, when Article 4 of the Constitution of Belgium mentions the existence of three linguistic regions in the country, in fact, it is indirectly proclaiming the exclusive officiality of French, Dutch and German in the different mentioned areas, and it does it also in the constitutional sphere. In a completely different field, the Constitution of the Autonomous Republic of Crimea indicates, without explicitly declaring it official, that Russian, as a language of interethnic communication and majority language, may be used in all areas of public life, which is equivalent to an indirect declaration of the officiality of this language in this Autonomous Republic.

When studying and delimiting the concept of official language, the first difficulty that may be found is that these constitutional declarations do almost never include the contents of the concept they employ. Despite the fact of being very much used, in not a single constitution is the category of officiality defined. According to the initial conception of it as an element of state identity and the normal means of functioning of its institutions, it may be interpreted that, in fact, several of the concepts employed and listed above have the same aim. Thus, despite terminological differences, the categories of official language, state language and the language of the Republic may be identified. The languages that are put on the same level as any of the official or state languages having this same legal status will have to be included.

As regards the concept of national language, a systematic interpretation of the constitutional texts allows to reach the conclusion that two differentiated assumptions should be distinguished. Indeed, in the constitutions of Malta, Ireland or Switzerland, this concept appears in addition to the official language one. These countries proclaim more than one official language. Given the fact that this category is already established in the Constitution, the national language category must imply a different consideration. In fact, it is a kind of more or less symbolic recognition of the special identity link of the political community with one or several of its official languages. Something similar would happen in the case of the Spanish regulations with the concept of own language (*lengua propia*) in relation to some Autonomous Communities or in the case of the Danish regulations with the concept of main language in relation to the Faeroe Islands and Greenland. Nevertheless, the constitutions of Finland and Moldavia do not mention the concept of official language, but only that

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<sup>35</sup> The Decree of the President of the Republic no. 670 of 31 August 1972, approves the unique text of the constitutional laws regarding the Special Autonomy Statute of the Trentino-Alto Adige Region.

<sup>36</sup> Constitutional Law no. 4 of 26 February 1948.

of national language. As would happen with the category of state languages, in these cases, the so-called national languages are in fact those that must be considered as having official status. Finally, the case of Liechtenstein is a clear one, for Article 6 puts the national language and the official language of the Principality fully on the same level.

Finally, other Constitutional Laws do not include formal linguistic declarations, which of course does not imply that in those countries there are no true official languages. This distinction between formal officiality and material officiality may be useful in order to put the statuses of official languages on the same level, mostly as regards international treaties on this matter that must compulsorily go beyond the variety of inner categories.

To sum up, when trying to make a list of the European languages that have official status, in Comparative Constitutional Law a variety of normative situations in this regard may be found, which break down as follows. Firstly, a difference may be established between the constitutional laws that do not include express officiality declarations and those that do include them. Within the latter, a twofold typology may be in turn established. On the one hand, a differentiation may be made between countries according to the fact that their linguistic declarations are contained in the very Constitution or in other regulations. On the other, the formal declarations that in addition make clear which are the languages benefiting from them may be distinguished from those that only limit themselves to declaring officiality in a generic way, without specifying which languages are granted this status. Indeed, formulas such as the ones employed in Article 3.2 of the Spanish Constitution, Article 12.2 of the Constitution of Croatia or Article 7.2 of the Constitution of Macedonia do not allow to identify immediately the languages that will be official in the respective institutional spheres. In turn, this generic declaration could be further completed with other specific declarations in norms of the constitutional type, as happens in Spain with some statutes of the bilingual Autonomous Communities.

Apart from what is strictly the Comparative Constitutional Law of Europe, other legal categorisations of languages may be found. The most relevant ones for the geographical area studied will be the ones corresponding to international organisations. Within them, people refer to “working languages”, sometimes also called “official languages”. For instance, in its regulations, the European Union puts both terms on the same level. It is even more interesting to analyse the European Charter for Regional or Minority Languages because from it new categories or definitions derive; the relation of the latter with the constitutionally established ones will not always be an easy one. Be that as it may, the European Charter neither defines what officiality is, for it limits itself to referring this concept to national legislations, and this with some determining factors.

The categories of languages foreseen by the Charter are the following:

- a) **Official language:** Any language declared or considered official by the state for all the territory. Therefore, it is a reference definition in which several constitutional declarations will have to be included. On the one hand, all the above-mentioned officiality declarations explicitly contained in the 22 European Constitutions that refer to “official language” should be included here, except for the ones regarding the Abkhazian and Rhaeto-Romanic languages, for their officiality does not include all their respective territories. The languages declared state languages in their constitutions, the language of the French Republic, Russian in Belarus and those languages considered national in the constitutions of Finland and Moldavia shall also be considered official in the sense of the Charter. In addition, the non-express officialities of the 16 countries that do not include any linguistic declaration in their constitutions shall also be added.
- b) **Regional or minority language:** Any language that is traditionally used within a given territory of a state by nationals of that state who form a group numerically smaller than the rest of the state’s population and which is different from the official language or languages

of that state. The Charter explicitly excludes from this concept the dialects of the official language and the languages of migrants. It is important to notice that the Charter takes into consideration regional or minority languages and, therefore, their sphere of application, according to full officialities. This implies that the languages that are official in one area of the territory are regarded as regional or minority languages to these effects, unless they are traditionally spoken by most of the population, an assumption that, although unlikely, cannot be completely ruled out, especially as regards the situation of Russian in some former Soviet Republics<sup>37</sup>.

- c) **Non-territorial language:** Any language used by nationals of a given state which differs from the language or languages used by the rest of the state's population but which, although traditionally used within the territory of the state, cannot be identified with a particular area of it.
- d) **"Less widely used" official language:** It is an official language that is less widely used on the whole or part of the state's territory. In principle, this concept was created in the Charter in order to meet some hypothetical cases of official state languages which are in a situation of weakness or of clear minority, as happens with Swedish in Finland or Gaelic in Ireland. Nevertheless, the writing of articles 2, 3 and 4 of this Charter leaves an open opportunity for a too wide interpretation in which official state languages could be included with regard to those places in which a different language is somehow predominant.

### 3.3. European languages and officiality.

According to the contents of the section above, a list of languages that have official status in Europe may be made, be it on the whole territory of a state or in an area of it. Nevertheless, when completing this list, there appear some difficulties that partly derive from some matters already approached when analysing the linguistic declarations of several European states.

The first difficulty to be found is the different terminology employed in the different constitutional norms. The most suitable interpretation may be the one mentioned in the paragraph above, that is to say, the same level on which the concepts of "official language", "state language" and "language of the Republic" have been placed. In some already mentioned cases, the concept of "national language" may be placed on the same level.

Another problem derives from the fact that, in some countries, constitutional norms establish the officiality of some languages that are different from the majority language without explicitly indicating which languages will be granted this status. Basically, this problem appears in two different cases, that is to say, in Spain and in the countries that separated themselves from the former Yugoslavia. In the Spanish case, the problem is solved by referring to the declarations of the Statutes of Autonomy<sup>38</sup>. Nevertheless, in the case of Croatia, Bosnia-Herzegovina, Serbia and Montenegro and Macedonia, the formula employed in their constitutions or subnational constitutions<sup>39</sup> does not allow to make a complete list of the languages that may be found "in official use". The only clear case in this regard would be the case of Albanian in Serbia and Macedonia given the clear majority of speakers of this language in many districts or municipalities in both

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<sup>37</sup> Strictly speaking, another similar case in this sense would be that of Finnish in Finland: it is not an official language in all the territory because it has been excluded from the Aaland Islands, although it is clearly the majority language in this country.

<sup>38</sup> Except for the officiality of the Aranese language that is not proclaimed in an Autonomy Statute but in the Catalan linguistic legislation.

<sup>39</sup> In the Constitutions of the two political bodies making up Bosnia-Herzegovina and Serbia and Montenegro, respectively.

countries. In fact, proposals have been made for explicitly making the status of Albanian official in the Republic of Macedonia.

A third and even more serious difficulty is found in the countries that do not have any linguistic declaration in their constitutional norms. Taking into consideration that the Constitution of Belgium includes an indirect declaration in this regard, then, there would be 16 countries with constitutions that do not include a linguistic declaration: Germany, Bosnia-Herzegovina, Denmark, Greece, Hungary, Italy, Luxembourg, Iceland, Norway, the Vatican, San Marino, the Czech Republic, the Netherlands, the United Kingdom, Sweden and Serbia-Montenegro. However, within this group, the situation is not a uniform one. On the one hand, there are three countries that, although they do not define their official languages in the Constitution, they do it in other regulations that are on the same level as their constitutions. These are Bosnia-Herzegovina, Serbia-Montenegro and Luxembourg. The first two ones establish their official languages in the subnational constitutions and the third one establishes its national languages in the Language Law of 1984.

Thus, as regards the other 13 states, there is no other possibility than interpreting which are the languages in official use from their practice or regulations that do not include a linguistic declaration. In almost every case, it is relatively simple to identify the language that is *de facto* official throughout the territory of these states: Germany (German), Denmark (Danish), Greece (Greek), Hungary (Hungarian), Italy (Italian), Iceland (Icelandic), the Vatican (Italian), San Marino (Italian), the Czech Republic (Czech), the Netherlands (Dutch), the United Kingdom (English) and Sweden (Swedish). In the case of Norway, Article 1 of the Law of 1980 on the Use of Languages in Public Services establishes that the Bokmal (or “Standard Norwegian”) and Nynorsk languages have equal value in written communication with public institutions. This, together with the considerations proclaimed by the Committee of Experts of the European Charter for Regional or Minority Languages allows to indicate that Nynorsk is also a *de facto* official language throughout the Norwegian territory<sup>40</sup>. In addition, there are three other cases in which both languages appear explicitly put on the same level –as regards their legal status– as the above-mentioned ones. They are Welsh in regard to English for Wales<sup>41</sup> and German and French as regards Italian for the South Tyrol<sup>42</sup> and the Aosta Valley<sup>43</sup>, respectively.

From now on, to establish which minority languages spoken in the countries that do not have linguistic declarations may be considered official, even in a reduced institutional or territorial sphere, will become a difficult task. Given the fact that these regulations do not employ the official language category, it is difficult to infer which cases would have remained under this category in case it were explicitly used. Institutional or administrative practice is the only one that may guide an interpretation in this regard. In this sense, the practice existing in some countries that establish linguistic officialities in the municipal sphere may be taken into account (Norway, Sweden, Finland, Switzerland...) as a valuable interpretative model. Consistent with all that has been said above, the following minority languages are *de facto* official in a specific area of the territory: Sami<sup>44</sup> (Norway, Sweden and Finland), Finnish<sup>45</sup> (Norway and Sweden), Ladin<sup>46</sup> (Province of Bolzano, Italy),

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<sup>40</sup> For the Committee of Experts of the Charter it is a “less widely used” official language, according to the terminology of the Charter itself: see ECRML Reports (2001) 6, of 22 November 2001, paragraph 14, and ECRML (2003) 2, of 3 September 2003, paragraph 9.

<sup>41</sup> Article 47 of the 1998 Government of Wales Act.

<sup>42</sup> Article 99 of the Autonomy Statute of the Trentino-Alto Adige Region.

<sup>43</sup> Article 38.1 of the Autonomy Statute of the Aosta Valley.

<sup>44</sup> In addition to the protective regulations that the three Nordic countries incorporate in regard to Sami, it is the official language in some municipalities or districts of the three states.

<sup>45</sup> Finnish is mentioned as the official language of some municipalities in Sweden and Norway together with the state language or with Sami, depending on the cases.

<sup>46</sup> Although the Autonomy Statute of the Trentino-Alto Adige Region does not establish anything in regard to the eventual officiality of Ladin, for this term does not exist in the Italian legislation, it does include important protection measures for this language in the valleys of Badia and Gardena that belong to the Province of

Sorbian<sup>47</sup> and Danish<sup>48</sup> (Germany), Slovenian<sup>49</sup> (provinces of Gorizia and Trieste, Italy) and Frisian (province of Frisia, the Netherlands).

A fourth and final problem appears in relation to the linguistic identity of some of the languages that could be included in the list of European official languages. Here is found the aforementioned underlying problem of the language names and the complex relations existing between linguistics and politics given the symbolic and identity importance of languages in our society. From a strictly legal point of view, there is no other solution than clinging to the literality of the norms and taking into account as many official linguistic varieties as “legal language names” may be identified, except that some aspects of the regulations may lead to the notion that two different language names refer to just one linguistic reality<sup>50</sup>. In this way, to these official effects, languages such cases as Bokmal and Nynorsk, Catalan and Valencian, Moldavian and Romanian, or Serbian, Croatian and Bosnian would be considered separated.

From these considerations and once the problem of the compulsory lack of definition present in Croatia, Bosnia-Herzegovina, Serbia-Montenegro and Macedonia has been explained, a complete list of official languages in Europe may be finally made. According the analysis made, today there are in Europe 40 languages that have an officiality status on at least the whole territory of the state<sup>51</sup>. Together with them, other European languages have a limited legal official status in a limited area of some of the states in which they are spoken. As seen above, these “partial officialities” are usually not explicitly expressed in their own constitutions (the sole exception would be that of Abkhazian in Georgia and that of Rhaeto-Romanic in Switzerland) but in the development legislation or in the basic norms that establish the political autonomy of a specific region or territory. In this situation of territorially limited officiality there are at least 31 European languages, without including the enormously complex case of the Russian Federation –in its European area, the

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Bolzano. According to them, it may be inferred that Ladin operates in fact as the third official language. The situation is not the same in the Fassa Valley that belongs to the Province of Trento, and it is much more unfavourable in the Ladin valleys of Ampezzo and Livinallongo, which administratively correspond to the Province of Belluno.

<sup>47</sup> Although the Constitutions of the *Länder* of Brandenburg and Saxony do not say anything explicitly about officiality, a term that is not employed in the German legislation, in practice, Sorbian or Wend seems to work as co-official language in some specific districts in both states. In addition, their protection seems to be also expressed in the 1990 Treaty of Unification.

<sup>48</sup> The official status of Danish in the bordering areas of Germany may be questioned but it is reinforced given its protection by means of the Declaration of the Schleswig-Holstein Government of 26 September 1949, the Declaration of Bonn of 1955 and the generic reference of Article 5 of the Constitution of the Schleswig-Holstein *Land* of 1990. On the contrary, the situation of German in Denmark seems to be more institutionally weak; from the text of the Declaration of the Denmark Government on the Status of the German Minority of 29 March 1955, no direct or indirect references result, references that could indicate an official status on a local basis.

<sup>49</sup> In addition, this language is expressly protected by the London Memorandum of 5 October 1954, substituted by the Treaty of Osimo of 1975 between Yugoslavia and Italy, although the term ‘official’ is not used in it, as in no other document of the Italian legislation.

<sup>50</sup> For instance, this would be the case of Basque, called “eusquera” in the Statute of the Basque Autonomous Community and “vascuence” in the Statute of the Autonomous Community of Navarre (*Comunidad Foral de Navarra*). The temptation of legally differentiating both realities on the basis of the different designations of the language is avoided here having recourse to the very same set of regulations in force. Indeed, the very Article 6.4 of the Basque Statute indicates that the Royal Academy of the Basque Language (*Euskaltzaindia*, *Real Academia de la Lengua Vasca*) will be an official consultative institution as regards Euskera. All the same, Article 3.1 of Navarre’s Law (*Ley Foral*) 18/1986 on *Vascuence* establishes that the official consultative institution in regard to the establishment of linguistic regulations will be the *Real Academia de la Lengua Vasca*. Therefore, underlying the identity of the competent linguistic institution there is a recognition of linguistic identity that goes beyond the specific name of the language in both cases.

<sup>51</sup> Including Finnish in regard to Finland, although, strictly speaking, it must be remembered that it is not official in the small area corresponding to the Aaland Islands.

number of partially official languages would be 27<sup>52</sup>. From these 31 languages, 16 are also official on the whole territory of their respective states. Nevertheless, the other 15 languages are not official on the whole territory of any state, and of them, 9 are official in regions with political autonomy and 6 have a formal status of officiality in municipal or district spheres.

In a schematic way, the list of the 55 official languages and of the states to which they correspond may be presented as follows:

#### EUROPEAN LANGUAGES WITH OFFICIALITY STATUS

(name of the state with normal script = the language is *de iure* official on the whole territory)  
(name of the state in italics = the language is *de facto* official in all the territory)  
(name of the state in parenthesis = the language is only official in a specific area of the territory)

01.- Abkhasian	(Georgia)
02.- Albanian	Albania + (Macedonia) + (Serbia and Montenegro)
03.- Aranese	(Spain)
04.- Armenian	Armenia
05.- Azeri	Azerbaijan
06.- Belarussian	Belarus
07.- Bosnian	(Bosnia)
08.- Bulgarian	Bulgaria
09.- Castilian	Spain
10.- Catalan	Andorra + (Spain)
11.- Croatian	Croatia + (Bosnia) + (Austria)
12.- Czech	<i>Czech Republic</i>
13.- Danish	<i>Denmark</i> + ( <i>Germany</i> )
14.- Dutch	<i>Netherlands</i> + (Belgium)
15.- English	Ireland + Malta + (United Kingdom)
16.- Estonian	Estonia
17.- Euskera	(Spain)
18.- Feroese	(Denmark)
19.- Finnish	Finland <sup>53</sup> + ( <i>Sweden</i> ) + ( <i>Norway</i> )
20.- French	France + Monaco + Luxembourg + (Belgium) + (Switzerland)
21.- Frisian	( <i>Netherlands</i> )
22.- Gaelic	Ireland
23.- Gagauz	(Moldavia)
24.- Galician	(Spain)
25.- Georgian	Georgia
26.- German	Austria + Luxembourg + Liechtenstein + <i>Germany</i> + (Belgium) + (Switzerland) + (Italy)
27.- Greek	Cyprus + <i>Greece</i>

<sup>52</sup> Indeed, all the languages that are expressly or tacitly declared official by the Constitutions of the different Autonomous Republics of the European territory could be found here. In this regard, the most difficult case to delimit is by far the multilingual Republic of Dagestan. The 27 mentioned languages would be the following: Adygean, Balkarian, Bashkir, Kalmyk, Karelian, Chechenian, Cherkesian, Chuvash, Ingus, Kabardian, Karachev, Komi, Mari, Mordvinian, Ossetian, Tatar, Udmurt and the 10 languages that would correspond to the Republic of Dagestan: Agulian, Avar, Darguin, Kumyk, Lak, Lesgo, Nogai, Rutul, Sajur and Tabasarian. For a study of the complex Russian case and of its minority languages, see RUIZ VIEYTEZ, E.J. (2002), *Las lenguas minoritarias de la Federación Rusa. Perspectivas para una ratificación de la Carta Europea de las Lenguas Regionales y Minoritarias*, Ciemen, Barcelona.

<sup>53</sup> Except in the Aaland Islands.

28.- Greenlandish	(Denmark)
29.- Hungarian	Hungary + (Austria) + (Slovenia)
30.- Icelandic	Iceland
31.- Italian	Italy + San Marino + Vatican + (Switzerland) + (Slovenia)
32.- Ladin	(Italy)
33.- Latvian	Latvia
34.- Lithuanian	Lithuania
35.- Luxembourgish	Luxembourg
36.- Macedonian	Macedonia
37.- Maltese	Malta
38.- Moldavian	Moldavia
39.- Norwegian	(Bokmal) Norway
40.- Nynorsk	Norway
41.- Polish	Poland
42.- Portuguese	Portugal
43.- Rhaeto-Romanic	(Switzerland)
44.- Romanian	Romania
45.- Russian	Russia + Bielorrusia + (Georgia) + (Ukraine) + (Moldavia)
46.- Sami	(Norway + Finland + Sweden)
47.- Serbian	(Serbo-Croatian) <sup>54</sup> Serbia and Montenegro + (Bosnia)
48.- Slovakian	Slovakia
49.- Slovenian	Slovenia
50.- Sorbian	(Germany)
51.- Swedish	Finland + Sweden
52.- Turkish	Turkey + Cyprus
53.- Ukrainian	Ukraine + (Moldavia)
54.- Valencian	(Spain)
55.- Welsh	(United Kingdom)

From another perspective, the ways of territorially managing the officiality of a language in the different types of Constitutional Law may be gathered in five models that represent the same number of ways of legally approaching the linguistic pluralism of a state. Although in fact some countries combine at the same time elements of different models in relation to several minority languages, according to the proposal put forward, the basic scheme would be structured as follows:

- 1) In this first model, two languages are official in the whole of the state. This implies, at least in theory, that the citizens may use two languages in their relations with public institutions in any place of the state territory. There are 6 countries that correspond to this first model: Malta, Cyprus, Finland, Ireland, Belarus and Luxembourg; in this last case, there are three instead of two official languages.
- 2) In the second model, the state recognises several languages as official, but they enjoy this consideration in different areas of the territory. In this case, in each area of the state territory there will normally be one sole official language. Today, the countries that follow this principle of linguistic territoriality are Switzerland, Belgium and Bosnia-Herzegovina.
- 3) A third possibility is that only one language has an officiality legal status in the whole of the state, while in some regions or autonomous areas there are other languages in a co-

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<sup>54</sup> In its Article 8, the Constitution of Serbia refers to the official language by using the traditional designation 'Serbo-Croatian', while Article 9 of the Constitution of Montenegro mentions Serbian as an official language.

officiality regime with the state language. This would be the case of 8 European countries: Denmark, Spain, Italy, Ukraine, Moldavia, Russia, the United Kingdom and Georgia.

- 4) In the fourth model, there is one sole official language all over the state, but the officiality of other minority languages in some specific territorial or institutional minor spheres, such as municipalities, districts or provinces, is explicitly or tacitly established. This would never happen with substate political institutions having a true territorial political autonomy. The states that should be included in this model would be: Sweden, Norway, Macedonia, Slovenia, Croatia, Serbia and Montenegro, Austria, Germany and the Netherlands.
- 5) The fifth group of countries would include those states that have only one official language, explicitly declared or established in practice. Within this group, some countries establish legal provisions in order to protect the linguistic rights of minority language speakers; however, the officiality condition is not explicitly considered in any specific sphere. In some cases, the degree of linguistic protection may be more or less high but non-existent in others. The countries that would belong to this group would be the 22 remaining states: the Vatican, San Marino, Monaco, Liechtenstein, Iceland, France, Greece, Turkey, Armenia, Albania, Hungary, Portugal, the Czech Republic, Poland, Andorra, Latvia, Lithuania, Estonia, Slovakia, Romania, Bulgaria and Azerbaijan.

#### **4. Questions regarding officiality as a legal category**

As seen above, the process of making a language official implies the explicit recognition by a state that one or several specific languages constitute elements of it; in this sense, it is a concept that may be instrumentally extended to every European state. Nevertheless, the legal status of language officiality presents several problems that are still unsolved in the so-called Linguistic Law. To start with, no international legal document contains any definition of official language. All the same, it is not easy to find a legal framework in which the officiality regime, its definition or contents are systematically expressed. In fact, it should be asked whether linguistic officiality implies a more or less uniform legal status or else a status that can be compared between different countries, and, consequently, it should also be asked to what extent taking it into consideration is correct when elaborating international standards of minority language protection. The importance of these reflections justifies itself given the important effects that the express or tacit declaration of the officiality of a specific language implies, both on the legal level and on the symbolic and political one.

##### *4.1. The declaration of officiality.*

The first question that may be approached in this regard refers to the decision of making one or several languages official. This refers to both the material contents of the decision and the dynamics of it. In today's International Law, it seems that the fact that the linguistic officiality declaration belongs to the internal jurisdiction of each state is something accepted without being questioned, for it is a decision that expresses the political sovereignty of each independent community. In this regard, a priori it would seem that there is neither any limit whatsoever to the decision of each state in this regard nor a single possibility of intervention of an international institution in it. This leads to having to admit that a state can for instance declare as official language a language absolutely different from the one spoken by its population.

Nevertheless, it may be asked whether this state power is absolute or, on the contrary, whether it has limits to which it must adjust. In case the answer to the last question is affirmative, it should be asked which those limits are and where their legal justification is found. Another question should also be to what extent a country can decide the officiality of its languages regardless of other pre-

existing factors which, in this case, should be identified. Therefore, one should also ask if there is a right to the official language; that is to say, if a specific collective group different from the state one has the right to have a language declared official. One could even think of the existence of a human right to the officiality of one's own language, something that may be approached both in regard to the individuals speaking that language and to the groups of the traditional linguistic minorities, native peoples and even in regard to most of the state population.

Faced with the positivist or reductionist view that would advocate the absolute discretion of states when deciding which are their official languages, a struggle for the existence of some meta-legal limits to such a power should be carried out, among which the following may be pointed out:

- a) the sociolinguistic situation of the country;
- b) the linguistic dynamics of the country and its context;
- c) the pre-existing legal situation;
- d) the political organisation of the state.

The sociolinguistic reality of the state constitutes a first determining factor as regards state discretionary power when defining its official languages. In this regard, the table of officialities that will finally result from it will have to keep a minimum coherence with the number and the extension of the languages traditionally spoken in that territory. The three fundamental conditions that should be taken into consideration in this regard would be: the historical or traditional nature of the languages of the country, the degree of territorial concentration of those languages and the population's degree of knowledge or of use of each language (Grin, 47).

According to what has been said above, one could ask oneself to what extent a state may refuse the official status to a traditional language spoken by the majority of the population. Indeed, the political decision could be adopted even by means of a democratic procedure, but in this case the sociolinguistic reality should constitute a negative limit, unless from the combination with the other factors to be mentioned below would derive the idea that the refusal of the officiality status to the majority language is justified. In these cases, one could ask oneself whether the refusal of officiality to the majority language or, even more, to the languages historically settled in a state is not an infringement of the freedom of its speakers (Fernández Liesa, 156). This would be the same as thinking about the existence of the right to the official language and the scope of this right. Comparative Constitutional Law does not usually offer guidelines in this regard, which does not mean that these cannot be found implicitly in it. Nevertheless, it is interesting to bring up the Swiss case in order to observe that, after the last constitutional reform in the year 2000, Article 70.2 of the Federal Constitution establishes that the cantons have the power to determine their official languages, but not in an absolute way, for the same provision explains that they must respect the traditional distribution of the languages over the territory, as well as take into consideration autochthonous linguistic minorities.

The second limiting factor of state discretionary power when determining its official languages is linguistic dynamics. Such factor could have been considered also as part of the sociolinguistic reality. Singularising aims to emphasise that linguistic processes are permanently on the go and that linguistic evolutions are in turn a relevant factor when adopting legal decisions in this regard. Indeed, the situation of a given language from a synchronic perspective may be analysed and it may be labelled as a minority language; but at the same time a diachronic approach may be adopted and such language may be regarded as being in a situation of regression or as an endangered one. The minority nature refers to a static situation, whereas the endangered situation refers to dynamics (Grin, 38).

In addition to being useful for protective linguistic policies which are different according to each case, linguistic dynamics may imply consequences in relation to the process of making languages official, tingeing or altering the consequences that would be reached from the exclusive analysis of

the picture that results from the number of speakers of a given country at a specific historical moment. In addition, linguistic dynamics must play its role taking into consideration the immediate and general international context. Thus, for instance, the situation of Russian as a widely spread majority language in countries such as the Baltic States or Moldavia could be considered – according to sociolinguistic reality– as the factor determining its adoption as an official language. Nevertheless, considering the existing linguistic dynamics, Russian is a majority and official language in a large part of the territory including the bordering states of the aforementioned ones, it has an international community of speakers that is far from being endangered, it has increasingly been imposing itself in the aforementioned countries as a consequence of their belonging for decades to a declining state and, on the contrary, the national languages that were original from those countries are the ones that have been undergoing a linguistic regression over several decades. All these considerations –and not so much a hypothetical freedom unconditionally decided by the new states– may justify that in such a sociolinguistic situation, Russian has not been adopted in them as official.

The pre-existing legal situation may also be a factor to be taken into consideration in regard to the ones described above. According to this, there would be a basic principle of maintenance of the legal status of a language that would prevent it from “protective regression”. Given the fact that the conservation of the European linguistic heritage and of its diversity constitutes increasingly and more clearly a guiding principle accepted in the international sphere, it must be understood that, except in situations that are clearly justified on the basis of the existing linguistic dynamics, no language must reduce its legal status and, at the most, legal modifications will always have to be carried out in the sense of increasing the protective scope of the languages affected, moving towards the recognition of their official condition or the territorial or material extension of them.

Finally, the very same state political organisation may also be a limiting factor when establishing linguistic officialities. Basically, this concerns the democratic or non-democratic situation of such a state or, even, its degree of political decentralisation. This factor would keep a special relation with the previous one given the fact that the pre-existing legal situation could not be considered in the same way if it comes from a democratic regime or from a non-democratic one. In the last case, processes of linguistic imposition through Law have taken place more frequently, and a substantial alteration of the pre-existent legal reality in regard to languages may be more justified in view of the linguistic processes of regression or expansion that may have taken place. All the same, the respect for the pre-existent framework may not be considered when a multilingual state has organised itself in a decentralised way –and, therefore, with the predominance of a specific linguistic group– equivalent to the case in which it has built itself in a decentralised way and with a greater balance in the share of political power to which each linguistic group may have access.

#### *4.2. The contents of officiality.*

As pointed out above, Comparative Constitutional Law does not help to define the official language legal category. The legal and political concepts themselves contain different meanings in different countries, and the terminologies employed are not uniform either. The Spanish Constitutional Court presented a definition of linguistic officiality in a decision issued in 1986 in which it established that “regardless of its reality and importance as a social phenomenon, a language is official when it is recognised by public authorities as the normal means of communication within and between themselves and in their relations with private individuals, with full validity and legal effects”<sup>55</sup>. Therefore, it is the definition of a legal category, which consequently highlights political decision above sociolinguistic reality.

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<sup>55</sup> Decision of the Spanish Constitutional Court 82/1986 of 26 June, which decides on the unconstitutionality appeal against the Basic Law on the Normalisation of Basque Language Use, second legal fundament.

Once the definition of officiality as a legal category has been established, it is much more difficult to delimit the contents of this legal status. Firstly, these contents may be approached separating them into a positive sphere and a negative one. Indeed, officiality will imply positive contents in virtue of which the language involved may be used in the basic spheres of public social relations: education, public institutions, administrative services, the administration of justice, social communication means. The positive contents may also imply the public phenomenon of the use of the official language in some specific spheres of social relations: publications, artistic and scientific production, marketing of products. At any rate, this promotion activity that may have economic contents and that can be carried out directly or by means of fiscal measures must be developed in such a way that it does not collide with other public liberties (Milian i Massana, 2002, 115).

As regards the negative contents of officiality, firstly, they could be specified in the requirement of language knowledge by the citizens of a given state. As has been observed above, only the Constitutions of Spain and Bulgaria explicitly establish the requirement of the knowledge of the state official language by their citizens. Together with those who advocate that this generic requirement adds nothing to the officiality contents (Agirreazkuenaga, 88), some people point out that its existence must have some kind of legal consequence different from officiality itself (Barrère, 280). Usually, it has been interpreted that the knowledge requirement derives from a *iuris tantum* presumption of citizens' language knowledge, as the Spanish Constitutional Court does<sup>56</sup>, but one may ask whether this does not also happen in the case of the state official languages for which provisions of knowledge requirement are not foreseen. Be that as it may, this knowledge presumption does not seem to apply equally to the different languages that have a shared officiality with the state language (Agirreazkuenaga, 86). Besides, the presumption of official language knowledge does not operate territorially but personally in regard to the state's citizens; in this sense, they may find themselves in a worse situation than foreign residents in regard, for instance, to acquiring the capacity of expressing themselves in another non-official language, not even by means of a translation service (Milian i Massana, 1991, 102).

Perhaps another aspect of the negative contents of officiality would be the obligation of using the language in some specific spheres of private relations. In no case must this either affect the sphere of private relations without any public significance or imply the prohibition of the use of any language by private individuals. Instead, the possibility regarding the requirement of a minimum use of the language by means of "linguistic quotas" or the establishment of legal obligations in regard to the use of the official language together with the language or languages chosen by the company or respective institution may be taken into consideration<sup>57</sup> (Milian i Massana, 2002).

At any rate, it may be observed how some specific aspects of the possible contents of officiality are not equally applied to all official languages. As pointed out, this happens with the knowledge presumption in regard to the languages that share officiality with the official language throughout the state. In addition, a comparative view of the panorama of the 55 official languages in Europe allows to verify the differences as regards the contents of officiality in the different cases. Therefore, the legal status of officiality admits important modulations in its contents, although no regulations establishing limits to such modulations can be found.

Firstly, when systematising these differences, one may speak about an asymmetric officiality of several languages within one state. This asymmetry may derive directly from the sociolinguistic situation, a true constant limit to Linguistic Law, for the application of a specific legal measure in favour of official languages cannot be put into effect in the same way depending on aspects such as the dimension of the linguistic group or its higher or lower degree of territorial concentration. In

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<sup>56</sup> Decision 74/1987 of 25 May.

<sup>57</sup> By means of the "at least in the official language" clauses, they are very frequent in the linguistic legislation of countries undergoing renationalisation processes, or they may be found, for instance, in articles 31.1 and 33 of the Catalan Law 1/1998 of 7 January on Linguistic Policy.

addition, asymmetry may also be legal, as happens with officiality models shared between a state language for all the territory and the official languages in substate spheres. As pointed out, in these cases, the duty of knowing the official languages or the presumption of their knowledge by the nationals does not operate in the same way in regard to the majority language or the minority ones.

Along this same line, exclusive officiality cannot be understood as having identical contents to the officiality shared without exclusivity. That is to say, what seems to affect the contents of officiality is not so much the shared nature of such status but the non-existence of an area within the same state where the language has an exclusive official status. Therefore, being an official language is something that cannot be compared to being a co-official language or a levelled language (Barrère, 280).

Thirdly, in the official status of a language different contents may be distinguished according to whether officiality is full or limited. Again, the reality may imply that the legally official situation of a specific language that is in a weak position becomes in practice limited officiality. In fact, this happens in those places in which the native language has become a minority one compared to the state one, even if both are in a situation of theoretical official equality. In addition, from the legal point of view, there may also be restrictions to officiality in regard to some specific uses for some specific institutions or in some specific territories. In all these instances, one may ask oneself whether the restrictions applied in the official status of a language do not imply in practice its lack of operativeness.

Indeed, here a fundamental question is raised because the official status of a language, despite its eventual variability and particularity, must have some minimum contents if it wants to be valid as a legal category. This minimum content would be the equivalent of the concept of “essential contents” that is usually employed as regards fundamental rights. In fact, if given its territorial or functional restriction the official status of a language does not express itself in a minimum of real powers for its speakers, then the fraudulent category of “empty officiality” could be in the end considered. At any rate, it is true that today it is difficult to delimit which are these essential minimum officiality contents that could be demanded in every circumstance. Be that as it may, the legal condition of officiality must express itself in linguistic rights for the speakers; this is why it is necessary to study the complex relations that will occur between this minimum status, human rights and the rights of linguistic communities, especially minority ones.

#### *4.3. Officiality and linguistic human rights.*

As observed above, the positive contents of the officiality status must result in a series of rights and powers in favour of the speakers of the official language. At the same time, it seems clear that this whole series of rights and powers must include more rights than just the linguistic contents ones corresponding to every individual because they belong to the whole list of human rights.

Therefore, in the relation existing between officiality status and human rights, two questions may be basically posed. Firstly, if there is a right to the official language. As it has been observed above, the non-declaration of officiality of the historical and natural languages established in a given state could limit the freedom of the individuals (Fernández Liesa, 156) and, consequently, violate some rights of the individuals or of the linguistic group involved. Secondly, once a specific language is official, it should be asked which are the rights derived from this status that add to the whole series of linguistic human rights of any individual. This refers back again to the question regarding the minimum or essential contents of the officiality legal status.

As regards the first question, some people propose to distinguish between the right to a language and the right to the language. The right to a language, or the right to the official language, would be a right based on historical and sociolinguistic conditions and it would materialise in the recognition

of an officiality status; in principle, it must not be regarded as a fundamental right. In turn, the right to the language would be a fundamental, universal and permanent human right (Turi, 1990, 60). This second right would legitimate people to use their language in every private function and in some public relations as, for instance, in one's own defence when facing an accusatory procedure. And this regardless of the fact that such a language does not have an official status. That is to say, the right to the language would materialise in the whole series of linguistic human rights or, in other words, in the whole series of linguistic expressions that human rights or fundamental rights imply. This is why what is sometimes presented under the heading of linguistic rights are but expressions of other fundamental human rights, especially freedom of expression, the right to a name, the right to private and family life or the freedom of education, among others (De Varennes, 2001; Nic Shuibhne, 1998). Contrary to this, the right to a language would rather imply the power of a specific linguistic group to obtain an official legal status for its language, which later on would need to materialise in other higher powers, especially in the use of this language in public relations.

According to this view, the right to a language would appear as a collective right, whereas the right to the language would be like a series of individual rights. Nevertheless, this division between individual and collective rights is not easy to articulate, neither on the theoretical level nor on the practical one. On the one hand, because collective rights imply countless operational problems as regards the definition of the holder of this right and the conditions related to its exercise. In these cases, one may also think about whether individual people have some right to the official language once the group has decided not to exercise the right to a language or to do it in a negative way. On the other hand, the view that points out that linguistic rights are both individual and collective is quite extended (Turi, 1990, 49; Peeters, 411; Several authors, 1998, 234). It is thus expressed in Article 1.2 of the Universal Declaration of Linguistic Rights<sup>58</sup>.

In this sense, one needs to think about the real meaning of human (or linguistic) collective rights. As a matter of fact, one same right, with equal object and contents, cannot be at the same time individual and collective. The existence of two different holders who, in addition, operate on superposed levels (individual and community) and who may have different and contradictory wills implies a theoretical contradiction. If a specific group decides to practice its rights, it must be asked which is the margin of the individual belonging to this very same group and who might have decided not to exercise it. Contrary to this, if the group does not wish to exercise a specific right, it must be clear whether the decision binds the individuals that make it up or if they may exercise this right individually, in the hypothetical case that this were possible. If the answer is affirmative, then the real scope of the decision made by the group is not clear.

In fact, what distorts this categorisation is the confusion between different rights because, sometimes, similar terms are used to refer to different legal contents. Thus, one would tend to think that the political decision on the configuration of a language as official must in all cases be the object of a collective right. However, the powers derived from such official status may result in individual rights; the approval of those rights by the group as such will then not be necessary. All the same, the linguistic powers deriving from individual human rights must be compulsorily considered as being individual. A different question is whether, as happens with other human rights, the exercise of a specific individual right needs the participation of other individual wills, which in fact does not affect the ultimate ownership of the right. Given the fact that language is an element of social relation, it is normal for the exercise of linguistic rights to imply the necessary participation of a whole series of people, as happens for instance with the right to meet or the right to marry. However, most of the times, every legitimate individual has the power to exercise the right. Only those powers that correspond to community political decision contents must be oriented towards collective rights. In addition to theoretical reasons, there are also other practical ones, because the exercise of collective rights is extremely complicated, unless the group is identified with the whole

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<sup>58</sup> Declaration of the World Conference on Linguistic Rights adopted in Barcelona on 9 June 1996.

population of the state or with a specific administrative body, which will never be put on the same level as linguistic groups. This observation will have to be discussed again when the subject of the linguistic minority concept is raised in the following section.

A last question in the relation between officiality and human rights may be approached as regards the concept of equality and the non-discrimination principle that is usually predominant in the declarations of human rights, both in the different constitutions and in international legal regulations. In this regard, it seems clear that the linguistic equality principle must overcome equality understood in the formal sense (Fernández Liesa, 144). The question here is how the declaration of officiality of a specific language has an influence with regard to the others. On the one hand, a material equality conception would lead to accept the need of affirmative actions in order to balance the social disadvantage of minority languages compared to majority ones (De Witte, 44). On the other hand, it seems logical to infer that the recognition of officiality must redound to a privileged legal status in relation to the others that do not have such status, although this is not considered as an infringement of the equality principle.

Therefore, the problem is found when trying to combine positive discrimination with linguistic officiality for the sake of a higher material equality. The very same officiality declaration of a specific language may imply a tool of positive discrimination in itself; however, at the same time, the idea of positive discrimination is usually oriented towards non-official languages precisely due to the fact that they are in such a situation. Perhaps, part of this apparent aporia is somehow related to a dichotomic distinction between official and minority languages; this is something that must be questioned. As a matter of fact, the material equality principle legitimates and forces states to adopt measures of positive discrimination in favour of specific languages or linguistic groups, basically in a minority or endangered situation, regardless of their official legal status. In turn, the recognition of officiality of a minority or endangered language may be the most important tool for a protective policy of this language. But the official status does not eliminate its position of endangered or minority language and, therefore, of a language deserving positive measures. Contrary to this, majority languages or languages in the process of linguistic expansion –usually in a situation of officiality– would not require the adoption of measures oriented towards ensuring their material equality with the other languages; given the fact that they are the languages identifying the states, they are therefore the normal vehicle of communication of them and with them.

#### *4.4. Officiality, minority languages and linguistic minorities.*

To the conceptual dichotomy between linguistic rights and human rights, a third category usually referred to as minority rights is added. In addition to the right to the language, the right to the official language (the right to a language) or the rights derived from the officiality status, in this case the idea of linguistic minority rights is approached. It would be necessary to ask to what extent the latter include the former and whether each conceptual category is contributing a completely different or only partly different semantic category.

Minority rights, in this case linguistic rights, could in turn be conceptualised as individual or collective rights. However, it seems that they must include some additional empowers to the ones already included in the list of linguistic rights that every person has. Indeed, it would not be possible to understand that the protective bonus that the recognition of minority rights implies met the linguistic contents of every individual's human rights; on the one hand, because that would be the same as assuming that everybody belongs to a minority, and, on the other, because the aforementioned bonus would not be as such given the fact that it would not contribute anything new to the pre-existent contents. Thus, the Human Rights Committee of the United Nations believes that the right of a linguistic minority to use its own language is effectively different from other human

rights of linguistic contents such as the freedom of expression, the right to legal defence or the non-discrimination principle<sup>59</sup>.

Given this situation, the right of the members of a linguistic minority to use their own language and, by extension, the minimum linguistic rights of minorities imply their own contents that would be different, on the one hand, from the linguistic contents of human rights and, on the other, from the rights and powers that are inherent to the officiality condition of a specific language. The materialisation of this kind of intermediary status is not easy and refers back again to a previous question: whether there exists a right to the official language that could be recognised for linguistic groups that are different from the whole state population or from each one of the individuals that make it up. Be that as it may and in regard to the above-mentioned equality principle, this status, which would apply in favour of minority languages to meet the rights of their speakers, implies the adoption by the state of positive measures and is not solved with the mere abstention of public institutions<sup>60</sup>. It is precisely at this point where the difference with the contents of every individual's linguistic rights can be more clearly located, regardless of the fact of their belonging or not to a linguistic minority.

However, this differentiation becomes extremely complex when trying to identify the people who are granted this intermediate legal status corresponding to linguistic minorities, because this refers us back to the definition of minority itself, a matter that is difficult to solve by means of legal tools (Ruiz, 2001). Indeed, when faced with the national minority concept largely used in European countries, the Human Rights Committee of the United Nations has recognised that the right of the members of a minority to use their own language cannot only correspond to the people that hold the legal nationality of the state involved, but it should include foreign people, even those who are only visitors<sup>61</sup>. Given this situation and given the fact that no definition of linguistic minority is provided in international regulations, in practice, almost any human group could claim to use its own language in a state because of its minority condition and its subsequent right. Along these lines, if the rights linguistic minorities benefit from are applied in practice to any language spoken in a given country, the distinction between the basic legal status derived from human rights and this new protective level would disappear, with two important consequences: on the one hand, states would be bound to solutions which are difficult to implement and, on the other, it would not be possible to meet the principle of the European linguistic heritage preservation, which seems to be interpreted in a rather historical sense.

All this can only be solved with a suitable conceptualisation of linguistic minority groups and, consequently, of minority languages. Nevertheless, this subject is legally very difficult and politically very delicate. A priori, there seems to exist a clear shared conception that the languages traditionally spoken on the Continent deserve a protection status that is different from that of the languages that are spoken today in Europe as a consequence of more or less recent migratory processes. However, the distinction between them in the field of Law is not at all easy. When defining minorities, two criteria are traditionally used to such purpose. The first one is the request of nationality status from the minority members, so that foreign immigrants are left outside this category. Nevertheless, this solution is partial and unstable, for there are increasingly more immigrants that may acquire the legal nationality of the European states without losing their linguistic identity. The criterion of legal nationality is not useful in the future to differentiate the "traditional" linguistic minorities from the recently settled ones. The second criterion used is the temporal one, by which a minimum time limit of permanent stay in a given country for the minority recognition is established. However, this criterion is also inefficient in the long run because, sooner or later, the requested time limit will be reached by immigrants.

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<sup>59</sup> UN Human Rights Committee, General Comment no. 23 (50) on Article 27 of the International Covenant on Civil and Political Rights, of 6 April 1994 (Doc. CCPR/C/21/Rev. 1/Add. 5), paragraph 5.3.

<sup>60</sup> *Ibid.*, paragraphs 6.1, 6.2 and 9.

<sup>61</sup> *Ibid.*, paragraph 5.2.

In this situation, one shall also ask oneself about the legitimacy of defending the preservation or protection of a given linguistic situation. Whereas traditional minority linguistic groups deserve a protective legal status and positive measures of the public institutions in order to guarantee the survival and development of their respective languages, it is also true that the new linguistic communities that are originating and settling in European countries could also demand a protective action of the states in which they live and to the well-being of which they contribute. A difference between linguistic minorities will normally be found in the concentration of traditional groups in some specific territories; however, it is clear that, as regards the size of linguistic groups, very soon, several communities of speakers of different languages of non-European origin will be constituted of a higher number of members than that of some traditional linguistic communities.

In regard to this problem, one should ask oneself about the relationship between official language and minority language, which depends again on the definition of linguistic minority one wishes to propose. Thus, there are people who consider that, in fact, a linguistic community is not a minority if it has the political power to regulate its own linguistic affairs and its own linguistic regime. The only linguistic minorities would be those communities whose language is regulated by the majority group (Turi, 1998, 31). This approach would therefore focus on each group's respective power, but it does not solve the question of the differentiation between minority languages and other state languages either. According to it, it would be possible to interpret that every language that does not have an official status is in fact a minority language and, consequently, that there is behind it a community of speakers that makes up a linguistic minority, regardless of other factors.

As far as this paper is concerned, the dichotomy between official language and minority language has already been rejected many times. In this regard, the only thing to be done is to advocate an objective concept of linguistic minority or of minority language. Their existence must be considered a matter of fact that is not subject to its recognition by the state involved<sup>62</sup>. In fact, the European Charter for Regional or Minority Languages itself is based on this principle; its Article 7 can be applied to all the languages that are spoken in a state party, regardless of the fact of being recognised or not by it. In this sense, in each state or political sphere of reference the majority language may be distinguished from the minority languages, which are all those that are spoken by a group that is different from the majority one. Within minority languages, one may distinguish the specific or autochthonous minority languages and those that do not belong to what may be considered the state or the European linguistic patrimony. The speakers of the first ones would benefit at least from the status corresponding to linguistic minorities, although their own language would also be considered in this case as being official. The speakers of the other languages would be able to exercise the linguistic powers derived from the fundamental rights. In no case may it be interpreted –from this perspective– that the access of a language to the officiality status eliminates or invalidates its real minority condition.

However, this picture is legitimate insofar as the concept of European linguistic patrimony is understood in a dynamic and progressive way. The languages that join the new European multicultural societies must have the opportunity to have access, sooner rather than later, to the state or the European common identity. This should not redound in a greater weakness of the traditional languages of the Continent; however, the refusal of more rights to the linguistic communities that are settling in the different countries does not seem legitimate either, even if they finally adopt the legal nationality of their new states. Once this has taken place, it will not be possible, for instance, to refuse the linguistic rights of the minorities foreseen in articles 10, 11 or 14 of the Framework Convention for the Protection of National Minorities in the cases in which a significant number of speakers are found.

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<sup>62</sup> *Ibid.*, paragraph 5.2.

Finally and according to the Human Rights Committee itself, the linguistic rights of minorities must be considered essentially individual<sup>63</sup>. This option is fundamentally based on operational criteria and does not deny that there are collective elements when exercising this right and in its very same definition, but not in the ownership of it. Otherwise, one would be obliged to establish and define the collective group that owns these rights. This titular group could be the community of speakers of the language itself, a concept that is already difficult to apply all by itself in practice, or the linguistic minority in a more 'identity' sense. In both cases, one would need to carry out a linguistic or an identity census in order to make the exercise of this right possible. Although several countries carry out this type of census, it is also true that there are many problems that appear in them in regard to other people's fundamental rights. All the same, once this census has been carried out and the subject owning the rights has been established, the latter must operate and, consequently, it is necessary to establish a system of representation and action of the community itself. At the same time, the problem in regard to the relation between these hypothetical collective rights and the individual rights of the members of the minority itself must also be taken into consideration. If the specific rights of the minority are shaped as collective ones, the individuals belonging to it would not be able to demand them for themselves in the hypothetical case that the decision of the community opposes the exercise of a specific right. From the perspective of minority language protection, it always seems more convenient to recognise the powers to each and all the speakers of the language than to the speakers as a whole, for the sensitiveness among them may differ in regard to linguistic identity. From an individual perspective, the collective identity of the group is not limited, but it offers the possibility that the rights are effectively exercised by some members of the minority, even in those cases in which this minority has not yet developed a political awareness that is active enough.

## 5. Conclusions

From the analysis of European Comparative Law, it may be inferred that officiality is a polysemous concept and that the contents of such legal status differs noticeably with respect to the different realities. Nevertheless, a classification of the different officialities found in Europe may be made meeting a twofold factor: the complete or partial nature of officiality on the territorial level or on the personal one, and the sociolinguistic situation. A categorisation must be made not so much of the officiality statuses according to their formally proclaimed legal contents but to their real operativeness, taking into consideration that, as has already been explained, Linguistic Law is clearly conditioned in its application due to linguistic and social reality. Therefore, the officialities are systematised by intersecting two important factors, one of a formal legal nature and the other arising from positive sociological analysis. Thus, in principle four groups of officialities are obtained and in two of them two subgroups may be distinguished:

- a) **Full officiality and dominant language:** This is the case of French in France or Monaco, Swedish in Sweden or Russian in the Russian Federation. In this case, officiality shows all the possible effects and the language involved is considered an element of the state's linguistic identity.
- b) **Full officiality and non-dominant language:** This is the case of Irish Gaelic in Ireland, of Swedish in Finland or English in Malta. In these cases, the officiality status of the language, despite having the same formal content as that of the languages included in the section above, does not deploy full effects given social limitation. Language is still an identity element of the state although it evokes a colonial past (Malta) and it is an element of a more symbolic nature generally based on historical or geographical explanations. In this group, cases with a more doubtful filiation may be found, such as Russian in Belarus or French in Luxembourg.

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<sup>63</sup> *Ibid.*, paragraph 6.2.

- c) **Partial or limited officiality and dominant language :**
- a. **Exclusive officiality:** These are the cases in which the territorial principle is strictly adopted. This is the case of French or German in Switzerland or Belgium. In those cases, the officiality status corresponds –given its contents and effects– to the one of section a) because in practice it is as if the state were linguistically divided into different monolingual entities according to the respective dominant languages. It may be assumed that the Swedish of the Aaland Islands is found in this officiality sphere, as opposed to Swedish in the rest of Finland.
  - b. **Shared officiality:** It may be found in political communities that have a certain level of autonomy. These are the cases of Feroese in the Feroe Islands, Greenlandish in Greenland, German in the South Tyrol, Russian in Transnistria or Crimea, Albanian in Kosovo or Catalan in Catalonia or the Balearic Islands. In some cases, the situation of these officialities may remind of the ones mentioned in the section above; however, in most cases, it cannot be compared to such an intense officiality, for it produces a decrease in the fact of sharing this status with the language that belongs to the a) group and the influence of which directly provokes that the status of these languages, although still dominant in their areas, is not so intense in both the legal and social practice.
- d) **Partial or limited officiality and non-dominant language :**
- a. **Officiality in the institutional sphere of political autonomy:** This includes the cases in which the language, although giving way socially to the state language with which it shares officiality, benefits from some symbolic institutional presence in a substate organised sphere. This officiality fights against the situation of diglossia and, therefore, it produces more limited effects than that of the state language; however, nominally and symbolically, the language has a certain exclusive institutional space that allows it to build for itself a more advanced officiality than the one corresponding to the situations of the following section. Cases such as Euskera in the Basque Country, Welsh in Wales or Gagauzian in Gagauzia would clearly be in this situation. Other cases such as Galician in Galicia, Valencian in Valencia or French in the Aosta Valley may correspond to this group or to the previous one depending on the qualitative linguistic uses that we consider relevant. The peculiar case of Frisian in Frisia is also a borderline case between this group and the following one.
  - b. **Officiality in the local institutional sphere without its own political power:** This last group may include all those other officialities that do not exist in institutional frameworks with political autonomy. They are always officialities that are shared with that of the state official language or, in some cases, the regional one. In these cases, the limited institutional, geographical or population sphere in which officiality is recognised is what seriously limits and conditions its real contents and its effects in everyday life. Language barely fulfils symbolic functions regarding the outside sphere although it may logically operate as an element of cohesion of the group and presents a certain tolerance of the state towards plurality. In this group such cases as Slovenian in Italy, Sorbian in Germany, Hungarian in Slovenia or Sami in Norway might be included.

As regards the relationship between officiality and other linguistic legal statuses, a classification of linguistic rights at three different levels is necessary. The highest level would be occupied by the very same officiality condition, which materialises in a large series of rights condensed in the so-called right to a language and that modulate themselves in their operativeness in the way pointed out in the paragraph above. The linguistic rights that in fact are equal to the linguistic contents of the fundamental rights that can be applied to every individual should be placed on the base of this scheme. They would be those powers derived from the freedom of expression, the right to a name or the minimum guarantees of any arrested or accused person. These rights with linguistic contents correspond to all the individuals and are related to the so-called right to the language.

Finally, between the level of the formal recognition of a language and the level of the minimum linguistic guarantee of every language in the sphere of the most authentic freedom, there is the group of rights corresponding to the members of linguistic minorities. This group of rights also belongs to the whole group of human rights, as shown in the very same Article 27 of the International Covenant on Civil and Political Rights, but with the particularity that they contribute a greater content to the rights mentioned in the paragraph above and that they cannot be applied to all people but only to the members of the so-called linguistic minorities. This group is condensed around the right to use one's own language, which later on derives basically in the possibility to use it with public institutions when there are the minimum conditions and in the right to the teaching of – and the education in – the minority language. Obviously, if the language involved is officially recognised, this protective group is overcome. The accurate line that must be drawn between the legal status that must be respected in the case of a minority language and that one deriving from the officiality condition still needs to be planned in several spheres. If the minority condition guarantees its use with all the public institutions and its full integration in education, then, an officiality status is becoming closer. Perhaps the best visualisation of the difference between both levels is precisely found in the gradation that may be established in the two aforementioned rights.

The fundamental problem is not so much the differentiation between the contents of the legal status that can be applied to every language and that one that can be applied to minority languages, but their identification. This leads back to the problem of the definition of linguistic minorities. Even if it is considered that minority languages must be those corresponding to traditional European linguistic patrimony, in this case it must be established that this is a dynamic concept and that there are no serious reasons to exclude in the future the linguistic communities that will settle over time on the Continent.

In this regard, the officiality declaration or any other linguistic declaration is not a valid instrument to make closed languages classifications that enable to establish legal statuses that are useful on an international and European level, at least in today's situation of Comparative Constitutional Law. Firstly, because officialities themselves show different effects. Secondly, because the officiality declaration of a language does not alter its minority or endangered situation that must be established from an objective view on the sociolinguistic reality. This means that a minority language may have an officiality status, full or limited, but without losing its minority condition and, consequently, its right to demand a specific protective status for its inhabitants according to the International Law of Human Rights. In the same way that specific rights for the protection of minors or women are established, the rights of minorities meet the objective reality of groups that are set in a structural situation of institutional weakness. The fact that there exists a specific degree of institutional recognition or of respect for their rights does not eliminate the minority condition of a specific linguistic community, as it does not eliminate the minority or genre condition due to the mere respect for their respective rights either.

Indeed, the very same European Charter for Regional or Minority Languages seems to be willing to meet this scheme that excludes the confrontation between official and minority languages. In fact, in accordance with the Charter, a language with partial officiality is in principle a minority language, unless it is in a situation of exclusivity; that is to say, only the languages included in officialities of the a) or c.a) type are excluded. As regards the languages of the b) status, the fact is that the Charter does not directly consider them minority languages; however, it is true that its treatment as such is allowed under the euphemism "less widely used" official languages. Based on the fact that the languages with full officiality correspond almost in all cases to the majority language of the state population, the Charter is somehow ratifying that there must be a minimum treatment of minority languages and, therefore, of their respective linguistic minorities, regardless of the fact that some of them have reached some kind of official status. Therefore, the conditions of official language and minority language are compatible. The definition of the line dividing minority languages, the specific protection of which must be complied with according to human rights, from those "other languages"

that nourish the linguistic contents of the human rights of general application represents a much more difficult problem.

To sum up, the legal regulations on the linguistic question within a political community are intrinsically related to the political management of social or cultural diversity. This is why it is perhaps the most important challenge that developed post-modern societies must face: the management of the public space in societies that are increasingly plural and with mixed identities. For many people, cultural plurality –linguistic or identity plurality– is still considered an obstacle to overcome or, at the most, to tolerate. Furthermore, the inclusion of a higher number of cultures or languages into state identity elements, which in this case would express itself in a greater number of official languages, remains in democratic states at the expense of the majority's decisions, so that minority groups find themselves by definition in a situation of higher or lesser political weakness, if not effectively socially excluded. Faced with this institutional reality present today in contemporary nation-states, what is to be done now is shape political communities again, protect linguistic and cultural differences and negotiate their social integration again so that the other languages or minorities may participate in the building of public space (De Lucas, 78).

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