

# THE USE OF SPANISH REGIONAL OFFICIAL LANGUAGES IN THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

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**Abstract:** *Currently an important issue in the EU is the status of languages spoken in member state countries which are only official in a limited part of their territory. The political activism in countries such as Spain, in response to internal requests from nationalist parties, has played a key role in having EU institutions acknowledge the demand for recognition of those languages. The friendly approach of EU institutions to that claim is justified not only by the need for a greater involvement of EU citizens in the integration process, but also by the commitment to respect the national identities of member states. The agreements signed by Spain and several EU institutions, including the ECJ, contribute to the rise of a new category of languages to be recognized along with the EU official and working languages. Spanish citizens and residents are therefore granted the ability to send written communications to the ECJ in any of the official regional languages of Spain. The scope and ambit of these agreements are still very limited and symbolic. They might generate some practical problems. But, it's an opportunity for the EU to define an incipient linguistic policy.*

**Key words:** *Spanish co-official languages; European Court of Justice; EU linguistic policy.*

## 1. Introduction

Europe is an authentic linguistic mosaic[1]. It conglomerates an important variety of languages. In addition to the diversity of languages, there is also a diversity of linguistic regimes in the Member States.

Specifically, the linguistic regime of the EU (European Union) has traditionally been a very complex and sensitive question. Due to both its complexity and sensitivity, a confusing system has been developed to respond to the need to protect the important linguistic heritage acquired

from the long and dynamic political and cultural history of the continent.

The recent enlargement of the EU that included Eastern European countries has increased considerably the number of official languages. This and the debate on the *Treaty Establishing a Constitution for Europe* (TCE) have raised questions about the status of other languages spoken in Members States which are only official in a limited part of the Member States' territories. Still more important is the fact that there are regional official languages spoken by a significantly larger number of

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people than some of the EU official languages [2].

Recognition of these regional languages with respect to EU Institutions has been one of the priorities of the elected 2004 Spanish government which has signed several agreements allowing citizens to benefit from the right to choose to communicate with the EU institutions in any of the Spanish co-official languages. Among all of the agreements that have been signed, one of the most important is the Administrative Agreement signed recently[3] with the Court of Justice of the European Communities. This particular agreement is interesting in many respects and we will examine it more closely here.

## 2. Official Regional Languages in the EU

Art. 6.3 of the EU Treaty[4] states that “*the Union shall respect the national identities of its Member States*”. For this reason, preserving the linguistic pluralism and cultural diversity of the of the EU countries is identified as one of the most crucial[5] aspects of the unprecedented European integration process. Indeed, the option to implement an official multilingualism policy as an intentional political project for the EU is certainly an original initiative. However, experience has revealed that this important task for the EU institutions is quite laborious. Concerns about the remarkable increase in the number[6] of official languages due to the accession of new member states and therefore the risk to drift into a less operative linguistic system has also been a constant issue. As a result, a pending dilemma exists regarding how to guarantee legal security[7] to EU citizens protecting their rights entitled by this position, like for example the right provided for in paragraph 3 of art. 21 of the ECT[8] (European Community Treaty), and at the same time on how to guarantee a good administration of the EU institutions.

The Treaties have not been especially explicit in regard to the status of

languages. The status of official languages can be inferred from the primary law treaties when enumerating the languages considered authentic, and listed in art. 29.1 of the Rules of Procedure of the Court of Justice of the EC. Official languages of the EU coincide by principle with the official languages of the Member States. Meanwhile, Irish can be seen as an exception because it is formally an official language of the EU but not used on a daily basis by the official Journal of the EU. Irish is used in the treaties and primary law[9] acts.

Council Regulation N° 1/1959 determining the languages to be used by the European Economic Community distinguished between “treaty languages” and “working languages”[10]. Formally that distinction doesn’t seem to be relevant, and in practice the EU institutions have developed internal mechanisms to help insure a pragmatic and efficient use of official languages which involves reducing their number for efficiency purposes.[11]

A new category of languages called “co-official languages” is now emerging in the EU as a result of the political advocacy of countries like Spain that is seeking the recognition and use of these languages by EU institutions. Simultaneously, according to regulation 1/1958 and other foundational treaties of the EC, these languages can’t be considered “treaty languages” or “working languages” by the EU institutions, because they aren’t official languages of the EU.[12]

Co-official languages have nothing to do with the languages referred to in art. 8 of the Council Regulation 1/1958 which declares that, if a Member State has more than one official language “*the language to be used shall, at request of such State, be governed by the general rules of its law*”. This regulation is in reference to countries with more than one national official language. Illustration can be found in the situation of Ireland which has two official languages and requested a change from English[13] to Irish[14]; the latter

becoming one of the 23 official languages of the EU.

### 3. Spanish Co-Official Languages in The EU

For the purpose of this study, co-official languages refer to regional languages that have, at the same time, regional official status. This is true of Catalan, Basque, and Galician in Spain[15]. Their official status is alluded to in art. 3(2)[16] of the Spanish Constitution of 1978. Consequently, other types of regional languages are excluded from this ambit.

Since 1986 Spanish(Castilian) has been considered one of the official languages of the EU, despite the constant claim from nationalist political parties that other languages besides Spanish be official -or somehow used languages- in the EU.

It is only through the political activism of governments[17] that the role of regional official languages in the EU linguistic regime has been discussed. In fact, Spain is the first country to have filed official requests[18] and signed several Administrative Agreements[19] with EU institutions emphasizing the need to recognize co-official languages as semi-official languages of the EU. At the same time Spain has carefully avoided asking for a fully official status for these languages. In its Memorandum[20] on the 12th of December of 2004, the Spanish government proposed a modification of Regulation 1/1958 aimed at guarantirect written communication between citizens and EU Institutions, and promoting the specific use of co-official languages in particular oral communication situations and passive interpretation (E.g., in the EU Parliament, in the Committee of the Regions and in ministerial sessions of the EU Council). Additionally, Spain proposed that the final texts of the decisions adopted through the co-decision procedure between the EU parliament and the EU Council be published in these co-official languages. In this way, Spain called for a specific concession instead of full official status.

The foundation of this request was their claim that using the co-official languages with respect to EU institutions would *strengthen the identification* of the people with *the political project* of the EU [21]. These agreements have given the official regional languages a semi-official stature in these EU institutions even if their recognition seems to be, to date, very symbolic.

The EU Parliament Resolution *on languages in the Community and the situation of Catalan* [22], invites the Council and the Commission to take whatever steps are necessary to publish in Catalan the EC's treaties and basic texts; to use Catalan for disseminating public information concerning European institutions in all information media; to include Catalan in the programmes set up by the Commission for Learning European Languages; and to promote the use of Catalan by the services of the EU Commission in its written and oral communication when dealing with the public in the Autonomous Communities where that co-official language is spoken(e.g. Catalonia and Valencia).

The progressive recognition of the regional official languages as necessary for the construction of a culturally diverse and integrated EU has also been recently stressed by the Council Conclusion on June 13, 2005 which commented on, *the official use of additional languages within the Council and possibly other Institutions and bodies of the European Union*[23]. In this document the Council encourages the use of any "additional languages" whose "status is recognized by the Constitution of a member state in all or part of its territory or the use of which as a national language is authorised by law". The signing of Administrative Agreements with EU institutions encourages citizens to share ownership of its projects and makes available the opportunity to use their own mother tongue to communicate with EU institutions. At the same time, the Council affirms [24] that, in an effort to bring the

EU closer to all its citizens, the richness of its linguistic diversity must be taken into consideration. EU Institutions would bear no financial responsibility for the use of an official regional language by Member States' citizens but, on the contrary, the cost will be covered by the Member State who requested the use of an official regional language.

Council Conclusions quoted above allow the use of co-official languages for *passive interpreting* by Member States' governments in speeches in the Council meetings and "possibly in other Institutions or bodies (European Parliament or Committee of the Regions)". In the case of the Council, this passive interpretation is subject to some limits. The request would be approved when made "reasonably in advance" of the meeting and when the "necessary staff and equipment are available"[25].

In the final phase of the negotiation of the *Treaty Establishing a Constitution for Europe* in 2004, the Spanish Delegation that emerged out of the elections in May of 2004 requested the inclusion of the following paragraph in art. IV-448: "*This Treaty may also be translated into any other languages as determined by Member States among those which, in accordance with their constitutional order, enjoy official status in all or part of their territory. A certified copy of such translations shall be provided by the Member States concerned to be deposited in the archives of the Council.*" The paragraph quoted is identical to provisions in art. 55.2,[26] the consolidated version of the EUT (European Union Treaty) modified by the Treaty of Lisbon whose ratification process was stalled after Ireland refused by referendum to be bound by it.

If the Treaty of Lisbon is adopted, official regional languages will, for the first time, obtain the status of "translation languages" in the primary EC law. This would signify the recognition of a new status for these languages despite the fact

that they wouldn't be considered authentic versions of EU treaties. The translations would have no legal effect, and would have to conform to the authentic versions, that is, the "treaty languages" versions[27].

#### **4. Spanish Co-Official Languages in the Court of Justice of the European Communities**

The Administrative Agreement between the Court of Justice of the European Communities and the Kingdom of Spain was signed on the 27<sup>th</sup> of April, 2009. This agreement builds on the Council Conclusion from June, 2005 *on the official use of additional languages within the Council and possibly other Institutions and Bodies of the European Union*. This document prepared the way for the adoption of the agreement between Spain and the European Court of Justice. The Conclusion approved by the EU Council was initiated by the Spanish government in compliance with the political pact signed with various political parties from Catalonia. This alliance[28] gave the Spanish Socialist Party the necessary majority in the national parliament to govern the country. On the basis of this political pact, the Spanish government promoted various agreements with other EU institutions which have been mentioned earlier in this paper.

The Administrative Agreement with the Court of Justice authorizes the official use of Castilian, as well as other languages that are recognized by the Spanish constitution of 1978. Spanish citizens and residents are granted the ability to send written communications to the Court of Justice of the EC in any of the official regional languages of Spain. This permission excludes judicial communications and those related to the enforcement of a legal text. Communications whose purpose is to obtain a particular advantage (e.g. a public grant), or benefit (e.g. being awarded a contract), or applying for a job aren't covered by the Agreement.

The effective *modus operandi* on the use of the administrative facility granted by the Agreement is detailed under point 1.3. A special administrative unit from the Ministry of Territorial Policies of Spain called “Oficina Para las Lenguas Oficiales” (Office for Official Languages) will be the intermediary between the citizen and the EU Institution. Its task will be to send to the Court of Justice of the EC written communications that are originally in one of the regional official languages accompanied by a certified translation in Spanish. In its response, the Court will use Castilian. The Office for Official Languages will ensure the transmission of the reply in as short a time as possible to the interested party in the co-official language used in the original communication. The European Court of Justice refuses liability in the case of a translation that wouldn't be reliable. This position is understandable given that a third party is involved as an intermediary and could potentially alter the translation of the response sent to the citizen or resident.

It's mandatory that any written communication using co-official languages from a citizen to the court pass through the Office for Official Languages. Art. 2 of the Agreement states that any communications not accompanied by a certified translation from the Office for Official Languages will be rejected and returned to the sender. The time limit which the court has to answer a written communication from a citizen is determined from the moment it receives the official translation in Castilian. Paragraph 2<sup>nd</sup> of art. 3 says that the time limit will come to a close when the Court sends the written answer in Spanish to the Office for Official Languages.

Spain has committed itself to bear any direct and indirect costs that the Court might incur as a result of the implementation of the Agreement. This cost will be refunded annually.

The implementation of the Agreement is conditioned on previous notice to the

Secretary of the Court by the Spanish Ministry of Territorial Policies which must certify that the Office for Official Languages is ready to take responsibility for the cost of the translation of written communications in official regional languages from citizens or residents.

It's important to observe that this Administrative Agreement is not a typical act of the categories encompassed by EU law. Nevertheless, they are part of the *sui generis* categories of act. These acts are mandatory for the parties who have the power to amend or terminate them based on mutual consent.

The Agreement doesn't interfere with the regulations addressed in art. 29(4), *Rules of Procedure of the Court of Justice of the EC* because, as mentioned earlier, the Agreement excludes *ipsis verbis* legal communications. Indeed, art. 29(1) makes clear that for legal issues the language used will be one of the 23 listed official languages of the EU to be chosen by the applicant except if the defendant is a Member State or a natural or legal person who holds the nationality of a Member State. In that case, the “language of the case” will be the “official language of that State” or any of its official languages if it has more than one official language. Meanwhile, in a case situation, official regional languages can only be used when the witness or expert put forward that he is unable to adequately express himself in one of the official languages of the EU[29].

Lastly, the difference between this specific Administrative Agreement and the other Agreements signed by Spain must be highlighted. The Agreement with the Committee of the Regions and the Council of the EU identifies “Spanish citizens” as the only persons with the right to send written communications to the court. Contrarily, the Administrative Agreement with the Court of Justice states that Spanish citizens, as well as natural or legal persons residing in Spain are granted the right to use the official regional languages

in their communication with the court. For this reason the personal ambit of the rights granted by the administrative agreements signed by Spain need to be unified.

### 5. Conclusion

The enlargement process and the need to reform the EU have catalyzed a new debate and new interest in the status of co-official languages in the EU. The Council Conclusion of June 13, 2005 has propelled the issue from an individual Spanish request to a common interest problem in the EU. This Conclusion established regulations regarding the way Members States should proceed when interested in having their citizens communicate with EU Institutions in one of their regional official languages. Concern about the increasing number of official languages in the EU and the simultaneous risk of functional disruption or collapse of the EU Institutions has limited the admission of the use of co-official languages through the signing of Administrative Agreements which are restricted in their scope and material ambit. In the Court of Justice of the EC written communications must be separate from any judicial or legal matter and must not be filed with the intention of obtaining any advantage or benefit. Neither should they have anything to do with personal matters like applying for a job or a work position.

At the same time, seeing as the work of the Court is primarily judicial, citizens or residents who exercise the right to use co-official languages will also be limited in number since it is likely that people will not communicate with the Court unless they have a legal case.

The risk of slowness due to the intervention of a third party (the Office for Official Languages) who must translate the original documents to Castilian and from Castilian to Spanish, and translation to the working language of the Court (French) might obstruct the fluid exchange between the Court and citizens.

Moreover two key factors jeopardize the process, on the one hand the risk of an incorrect translation from the third party, and on the other hand, the confidentiality of the written communication.

The recognition of the use of co-official languages with respect to EU institutions is a very important achievement, even if this recognition is still very symbolic or political. Certainly it gives the opportunity to define an incipient linguistic policy for the EU. Additionally, their new status as semi-official languages of the EU helps defuse important and persistent political claims in Spain regarding the status of regional languages

### References

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3. Agreement between the Kingdom of Spain and the Court of Justice of the European Communities (See: [http://www.lehendakaritza.ejgv.euskadi.net/r4810572/es/contenidos/informacion/euskera\\_ue\\_gral/es\\_11146/adjuntos/euskera\\_ue\\_tjce\\_es.pdf](http://www.lehendakaritza.ejgv.euskadi.net/r4810572/es/contenidos/informacion/euskera_ue_gral/es_11146/adjuntos/euskera_ue_tjce_es.pdf)), signed on the 27.04.09.
4. OJ C 325, p.12, 24.12.2002; See also art. II-82 of the Charter of Fundamental Rights of the EU and its Preamble (OJ C 310, 16.12.2004).
5. ATHANASSIOU PHOEBUS, "The application of multilingualism in the European Union context", Legal working papers Series, nº 2, February 2006, European Central Bank, p. 8
6. It's important to observe that the linguistic regime of the EU has moved from a very simple, serviceable and original mechanism to a complex and confusing one with the many mutations it has experienced due to the

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  8. “Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 7 in one of the languages mentioned in Article 314 and have an answer in the same language” , OJ C 325, p. 33, 24.12.2002; see also art. 2 of Regulation 1/1958 (OJ 017, p. 0385 – 0386,06.10.1958).
  9. See note 12 and 13.
  10. See art. 1 of Regulation 1/1958 (OJ 017, p. 0385 – 0386, 06.10.1958).
  11. Some institutional frameworks like the meetings of the troika for external policy matters have adopted a “variable geometrical system” that includes the use of a reduced number of languages among which French, English, German and other languages depending on the needs of the participants are predominantly used. This is also the case for the major use of English in the Council and the Commission and the use of French in the Court of Justice of the EC and the European Court of Auditors : See ESTEVE GARCIA FRANCINA, “El nuevo...” op. cit., p. 459 and See also MCAULIFFE KAREN “Enlargement at the European Court of Justice: Law, Language and Translation” *European Law Journal*, Vol. 14, Issue 6, November 2008, pp. 808.
  12. See art. 314 ECT, OJ C 325, p. 154, 24.12.2002
  13. Art. 8 of the Irish Constitution of July 1<sup>st</sup> 1937 states that English is recognized as the second official language.
  14. Irish has become a fully official language of the EU on the 1<sup>st</sup> of January 2007: See Council Regulation (EC) N° 920/2005, OJ L 156, p3-4, 18.6.2005.
  15. See DEL VALLE GÁLVEZ, ALEJANDRO “ Spanish Regionalism in International and European Law” in *Regioni e autonomie territoriali nel diritto internazionale ed europeo*, Editoriale Scientifica, Napoli, 2006, pp. 291-312.
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  17. See ESTEVE GARCIA FRANCINA, “El nuevo...” op. cit., p. 45; See also GONZÁLEZ DE COS FRANCISCO, “Las lenguas oficiales de la Unión Europea y la propuesta española” *Colaboraciones* n° 219, 29 December 2004, Grupo de Estudios Estratégicos (GEES), p. 5, [www.gees.org/articulo/1006/](http://www.gees.org/articulo/1006/)
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20. See note 14.
  21. See "Memorandum...", note 12.
  22. OJ C 19, p.42, 28.01.1991
  23. OJ C 148, p.1-2, 18.6.2005.
  24. See paragraph 2, OJ C 148, p.1.
  25. See Point 5(b) (OJ C 148, p.1-2, 18.6.2005).
  26. OJ C 115, p.45, 9.5.2008; See also Declaration 16 on Article 53(2) of the Treaty on European Union(OJ C 306, p.256, 17.2.2007) and comments by SCHILLING THEODOR, "Language Rights in the European Union", *German Law Journal*, Vol. 09, No. 10, 2008, p. 1233.
  27. Art. 314 ECT (OJ C 325, p.154, 24.12.2002).
  28. See MORATA FRANCESC, "European Integration and the Spanish State of the Autonomies", *Zeitschrift für Staats- und Europawissenschaften*, Vol 4, Issue 4, March 2007, p. 508: "As a result of the victory of the PSOE in the March 2004 elections[...]"without having an absolute majority, like Gonzalez and Aznar before him, Zapatero had to negotiate with a series of political parties about the required parliamentary support and, especially, with the eight ERC deputies and the four ones of Izquierda Unida/Iniciativa per Catalunya-Verds. Both groups had among their priorities the participation of the Autonomous Communities and the use of the co-official languages in the EU. From there, with all eyes set on the referendum (for the approval of the Constitutional Treaty project) called for February 2005, the government quickly took the initiative."
  29. The Court Registrar shall arrange for translation in the language of the case: See art. 29.4 of the Rules of Procedure of the Court of Justice of the European Communities((OJ L 176 of 4.7.1991, p. 7, and OJ L 383 of 29.12.1992 ( with various amendments) and Point 5 of EU Parliament Resolution *on languages in the Community and the situation of Catalan* (OJ C 19, p.42, 28.01.1991).