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The Debate on Staff Language Competences and the Use of Official Languages in the Balearic Islands Health System

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Article abstract

The Spanish Constitution of 1978 and the Statute of Autonomy of the Balearic Islands of 1983 established the official nature of both Spanish and Catalan and entrusted public authorities with guaranteeing the right of citizens to use one or the other on an equal footing. Subsequent to the language legislation of 1986, the legal framework of Catalan has varied depending on the majority party that forms a government. The debate stirred up by these regulations demonstrates the difficulties in ensuring real equality between official languages, when social initiatives cannot translate into sufficient political support and the national political context is hostile. The article explores this debate and discusses recent regulations surrounding the official languages competencies of health system staff, from the direct experience of the authors, as members of two consultative institutions on legal and sociolinguistic matters.



The Debate on Staff Language Competences and the Use of Official Languages in the Balearic Islands Health System

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Abstract

The Spanish Constitution of 1978 and the Statute of Autonomy of the Balearic Islands of 1983 established the official nature of both Spanish and Catalan and entrusted public authorities with guaranteeing the right of citizens to use one or the other on an equal footing. Subsequent to the language legislation of 1986, the legal framework of Catalan has varied depending on the majority party that forms a government. The debate stirred up by these regulations demonstrates the difficulties in ensuring real equality between official languages, when social initiatives cannot translate into sufficient political support and the national political context is hostile. The article explores this debate and discusses recent regulations surrounding the official languages competencies of health system staff, from the direct experience of the authors, as members of two consultative institutions on legal and sociolinguistic matters.

Résumé

La Constitution espagnole de 1978 et le Statut d'autonomie des îles Baléares de 1983 ont établi le caractère officiel de l'espagnol et du catalan et ont confié aux pouvoirs publics la responsabilité de garantir le droit des citoyens d'utiliser aussi bien l'un que l'autre. Après la loi de 1986 sur la langue, le cadre juridique du catalan a varié en fonction du parti majoritaire qui forme le gouvernement. Le débat suscité par ces dispositions réglementaires démontre les difficultés à assurer une réelle égalité entre les langues officielles lorsque les initiatives sociales en ce sens ne peuvent rallier un soutien politique suffisant et que le contexte politique national est hostile. Cet article explore ce débat et discute de la récente réglementation des compétences du personnel du système de santé en matière de langues officielles. Il se base sur l'expérience directe des auteurs en tant que membres de deux institutions consultatives en matière juridique et sociolinguistique.

Resum

La Constitució espanyola de 1978 i l'Estatut d'Autonomia de les Illes Balears de 1983 van establir el caràcter oficial tant de la llengua castellana com de la catalana i van confiar als poders públics de garantir el dret dels ciutadans a utilitzar l'una o l'altra en peu d'igualtat. Després de la llei lingüística de 1986, el marc legal del català ha variat en funció del partit majoritari que ha format govern. El debat suscitat per aquestes regulacions demostra les dificultats per garantir la igualtat real entre les llengües oficials, quan les iniciatives socials no es poden traduir en un suport polític suficient i el context polític nacional és hostil. L'article explora aquest debat i discuteix les regulacions recents sobre les competències en idiomes oficials del personal del sistema sanitari, a partir de l'experiència directa dels autors, com a membres de dues institucions consultives sobre qüestions legals i sociolingüístiques.

Resumen

La Constitución española de 1978 y el Estatuto de Autonomía de las Islas Baleares de 1983 establecieron la doble oficialidad del castellano y el catalán, y encomendaron a los poderes públicos garantizar el derecho de los ciudadanos a usar una u otra lengua en igualdad de condiciones. Después de la ley lingüística de 1986, el régimen jurídico del catalán ha fluctuado según las mayorías de gobierno. En la legislatura 2015-2019 un gobierno progresista reactivó el *Consell Social de la Llengua Catalana*, órgano de participación, y restituyó la Ley de 1986, que había sido modificada por un gobierno de mayoría conservadora. Con la Ley 4/2016 se fijó la competencia lingüística de los servidores públicos para facilitar a los ciudadanos el uso del catalán, y con el Decreto 8/2018 se reguló con la misma finalidad la capacitación lingüística del personal de salud. El debate suscitado por estas normativas muestra las dificultades para hacer efectiva la igualdad entre las dos lenguas oficiales cuando la iniciativa social no encuentra un apoyo político suficiente y el contexto político estatal es adverso.

Introduction

Recent debate in the Balearic Islands about the use of official languages in the health system provides an example of the difficulties involved in the recovery of a minoritized language such as Catalan in its own territory, even though it is an official language and legislation mandates public authorities to achieve full equality with Spanish.

This article presents the direct experience of two observers who are particularly close to the facts. Maria Ballester, a professor of constitutional law at the University of the Balearic Islands, has been a member since 2009 of the *Consell Consultiu de les Illes Balears* [Advisory Council of the Balearic Islands],¹ which is the body that acts as a preliminary filter of legality in the deployment of regional legislation. Isidor Mari, a sociolinguist, is a member of the *Consell Social de la Llengua Catalana* [Social Council of the Catalan Language]

1. *Consell Consultiu de les Illes Balears*, <http://www.consellconsultiu.es>

of the Balearic Islands,² which is a body of social participation that advises the linguistic policies of the autonomous government. Mr. Marí has chaired a commission of this council charged with proposing appropriate measures for the normalization of the use of Catalan in the health care field.

This contribution outlines how the general legal framework for official languages has developed from the Spanish Constitution³, the Statute of Autonomy of the Balearic Islands⁴, and language and public service laws. In the following section, we present fluctuations that have taken place in legislation and regulations regarding the use of languages in the public service, with a focus on health care. The last section targets events that occurred during the 2015-2019 parliamentary term, when a progressive majority sought to promote effective equality of Catalan and Spanish in health services.

The obstacles that have arisen in the regulation and implementation of new policies are a good example of the opposition of state majorities and also the hesitations of regional governing majorities regarding the restoration of effective equality of the use of a language like Catalan, which has been marginalized for a long time.

The situation continues to evolve and, at the time of the final writing of this article, certain judicial decisions had been made that override recent regional language regulations in the health care field, offering new prospects for more favourable regulations on the use of Catalan.

Dual official language framework in the Balearic Islands

Article 3.1 of the Spanish Constitution of 1978 states that Castilian is the official Spanish language of the State, and citizens have the duty to know and the right to use it. Article 3.2 confers the Statutes of Autonomy the right to establish the official nature of other languages in their territories. The duty of knowing an official language is only established for Castilian, and not for other official languages, but it does not imply any obligation to use Castilian.

The Constitutional Court has set the limits and scope of the official nature of autochthonous languages (*llengües pròpies*) in their respective territories,⁵ consisting of their recog-

2. Consell Social de la Llengua Catalana, <http://www.caib.cat/govern/sac/fitxa.do?codi=2724109&coduo=2390443&lang=ca>

3. Art 3.1, CE.

4. LO 2/1983, 25 de febrero, *Estatuto de Autonomía para las islas Baleares* (BOE 1983, n 51, 6316) (Spain).

5. The concept of *llengua pròpia* (similar to *autochthonous language*) tends to underscore its nature of heritage and territoriality to reinforce its official status, though some legal controversy surrounding its meaning exists (Wurl, 2011). The *Explanatory Memorandum* of the Language Normalization Act in the Balearic Islands (1986) states that: *La llengua catalana i la llengua castellana són totes dues llengües oficials de la Comunitat Autònoma, amb el mateix rang, si bé de naturalesa diferent: l'oficialitat de la llengua catalana es basa en un estatut de territorialitat, amb el propòsit de mantenir*

inition by public authorities as an effective method of communication between themselves and citizens; in turn, the validity of documents produced in the language cannot be refuted or their legal effects denied.⁶ The declaration of the official nature of a language represents a mandate for public authorities to ensure knowledge and use of said language so that it can be a vehicle for communication and social integration.⁷ The court sees the right to use a regional language as a consequence of its official nature, although this does not imply the duty to know it.⁸

Thus, the multilingual model of Spain implies that the official nature of a language goes beyond the mere respect and protection guaranteed in Article 3.3 of the Constitution, with a higher status that requires definition in the respective Statutes of Autonomy in each territory. According to the Constitutional Court, the mandate for public authorities to ensure everyday official use of the native autochthonous language and to take the necessary steps ensuring knowledge thereof represents authorization to provide language support and normalization measures.⁹ By virtue of their respective Statutes of Autonomy, each autonomous region may establish the official nature of the minority language and actualize their mandate through respective language normalization acts, setting out the rights and duties of public authorities and citizens, not only in the area of education, but also with regard to the right to use the language with public authorities and the subsequent duty to know it in order to work in the civil service (López Basaguren, 1993, p. 95).

After approval of the Constitution, the Statute of Autonomy of the Balearic Islands¹⁰ set out the official nature of Catalan, alongside Castilian Spanish, with the explicit aim of preserving and strengthening the social and institutional use of Catalan (Colom Pastor, 2005, p. 40). The statutory framework (updated in a 2007 reform) sets out the principles to enable Catalan, as an official autochthonous language, to attain the same status enjoyed by Castilian Spanish (Segura Ginard, 1988, p. 37; Colom Pastor, 2003, p. 111); including the right to be used without discrimination, the mandate for public institutions to create the

la primacia de cada llengua en el seu territori històric. L'oficialitat del castellà, establerta per la Constitució a tot l'Estat, es basa en un estatut personal, a fi d'emparar els drets lingüístics dels ciutadans, encara que la seva llengua no sigui la pròpia del territori. [Catalan and Castilian Spanish are both official languages of the autonomous region, with the same status, although with a different nature. The official status of Catalan is based on a statute of territoriality with the aim of maintaining the primacy of each language in its historical territory. The official nature of Castilian Spanish, established by the Constitution of the nation, is based on a personal statute to protect the language rights of citizens, although their language is not autochthonous to the territory]. [All further translations are the author's own unless otherwise stated].

6. FJ 2, STC 46/1991, February 28.

7. FJ 4, STC 82/1986, June 26.

8. *Ibid*, FJ 3.

9. In Spain, *language normalization* should be understood as restoring equal—not subordinate—public status to a language. See STC 337/1994, December 23.

10. *Supra* note 4.

conditions of full equality of rights for citizens in the use of official languages, the protection and promotion of the autochthonous culture and historical legacy of the Balearic Islands, the authorization to exercise responsibilities in teaching Catalan, and the acknowledgement of a linguistic unity that is compatible with the existence of island variants.

Act 3/1986 on Language Normalization in the Balearic Islands¹¹ was unanimously approved, specifying the provisions in the Statute of Autonomy, with measures to be applied at the government level and in the education system, as well as the media. It states that the use of Catalan, as a native language of the autonomous region, is inherent to all levels of public administration and that the Regional Government of Balearic Islands must ensure its use across all administrative duties and activities. It tasks public institutions with adopting the necessary measures to progressively ensure language competence among public employees and establishes the normalization duty of public authorities with regard to the civil service.

Some initial measures¹², did not establish a requirement to know Catalan as a condition for passing staff selection tests. Nonetheless, in implementing the Language Normalization Act¹³, Decree 100/1990¹⁴ was passed, whereby the use of official languages in the public administration of the autonomous region is regulated, setting out the classification criteria for staff positions in regional public administrations, as well as the qualification level of Catalan required to hold these positions. Later on, Decree 27/1994 would dedicate a section to regulating the autochthonous language to join the ranks of the regional civil service¹⁵.

It was not until ten years after the Language Act of 1986 that Act 1/1996 would modify Article 45 of Act 2/1989¹⁶, and Catalan would become a requirement to work in the regional civil service. The reform of the Statute of Autonomy in 1999¹⁷ introduced a new section in Article 3 to ensure citizens' language rights were the same with regard to the use of both official languages (Colom Pastor, 2008, p. 77-79). More recently, Act 3/2003 on the legal system in the administration of the autonomous region of the Balearic Islands¹⁸ set out that fundamental civil service institutions must use Catalan in their internal operations, in their communication with one another, in communications and notifications sent to residents in the Catalan-speaking territory, and in administrative proceedings.

11. Llei 3/1986, de 29 d'abril, *de normalització lingüística* (BOCAIB n 15, May 20).

12. Art 45 Llei 2/1989, de 22 de febrer, *de la funció pública de la Comunitat Autònoma de les Illes Balears* (BOCAIB n 38, Machr 28).

13. *Supra* note 11.

14. BOCAIB n 154, December 18, 1990).

15. Art 41, d'11 de març, *pel qual s'aprova el Reglament d'ingrés del personal al servei de la Comunitat Autònoma* (BOCAIB n 36, March 24, 1994),

16. (BOIB n 60, May 16, 1996).

17. LO 3/1999, de 8 de gener, *de reforma de la Llei orgànica 2/1983, d'Estatut d'autonomia de les Illes Balears* (BOE supp n 3, February 5).

18. De 26 de març, *de règim jurídic de l'administració de la Comunitat Autònoma de les Illes Balears* (BOIB n 44, April 4, 2003).

The Statute of Autonomy reform approved by Organic Law 1/2007¹⁹ introduced certain improvements—especially Article 4 on the autochthonous language—although it did not represent substantial change.²⁰ Specifically, Article 14.3 sets out the right to address the regional administration in either of the two official languages and receive a reply in the same language. This legislation also establishes the requirement to deem knowledge of Catalan as a preferential merit to hold the positions of magistrate and judge, notaries public, and registrars of property, companies or personal property, and insists on the autonomous region's duty to provide the necessary means, so that all civil servants and workers assigned to the islands are able to acquire knowledge of the language and culture of the Balearic Islands.

In short, the two structural elements of the language system remain: a) the official nature of Catalan and Castilian Spanish, and the recognition of both as communication tools between citizens and public authorities with full validity and effectiveness; and b) the language normalization policy for Catalan promoted by public authorities to ensure citizens are able to use, in normal conditions, the autochthonous language of the Balearic Islands in all areas of life, both socially and with official institutions (Segura Ginard, 2012, p. 56-66). Despite this, the reform was not used to improve the core status of Catalan and ensure full equal rights and duties between the official languages. Neither at the regional initial phase, nor during its passage through the national parliament, was the duty to know and speak the autochthonous language of the autonomous region included in the Statute (Colom Pastor, 2008, p. 80-82; Caminal Badia, 2007, p. 240-242).

Changes in support of Catalan under different governments

Within the framework set out above, exercising language responsibilities and the ensuing effects on the social and institutional use of Catalan have been subject to successive political scenarios, depending on the various parliamentary majorities in each government term, with the status of the autochthonous language of the Balearic Islands experiencing either progress or regress (Ballester Cardell, 2016, p. 102). Governments with progressive majorities—the 5th (1999-2003), 7th (2007-2011) and 9th legislatures (2015-2019) and the current government (2019-)—have been beneficial for autochthonous language and culture; whereas, the status of Catalan has often suffered during conservative majority government

19. De 28 de febrer, *de reforma de l'Estatut d'autonomia de les Illes Balears* (BOE n 52, March 1).

20. In turn, the preamble refers to Catalan as central to the identity and to society in the Balearic Islands. Article 5 contains a mandate for the Balearic government to promote communication, cultural exchange and cooperation with communities and territories that have linguistic and cultural ties to the Balearic Islands; it particularly refers to the responsibility for protecting autochthonous culture (Article 34) and teaching Catalan (Article 35). It charges the Broadcasting Council with promoting language plurality in the media (Article 77) and calls for public media outlets to adhere to the principles that inspired the language model in the Statute of Autonomy (Article 90). Additionally, it calls for cooperation and collaboration agreements deemed appropriate to safeguard common language heritage and cultural communication between Catalan-speaking regions (additional provision).

terms (1st-4th, 6th and 8th legislatures). These fluctuations have hindered the ongoing recovery of Catalan, which has been subject to political convenience adjustments (Bibiloni, 1993; Colom Pastor, 2011, p. 12) within a context of instability, contradicting the guiding principle of non-regression in language normalization (Segura Ginard, 2012, p. 164-165) and case law, including Ruling no. 142/2010 handed down by the Chamber of Contentious Administrative Law of the High Court of Justice of the Balearic Islands, according to which, “*el paso efectivo del bilingüismo oficial al bilingüismo real es una tarea evolutiva, progresiva y en alguna medida pendiente aún hoy*” [the effective step from official to real bilingualism is an ongoing, progressive task that, to a certain extent, remains pending today].²¹

These vacillations in the regulatory framework of Catalan have also affected the language context in the health sector (Ballester Cardell, 2018, p. 60-62). In the progressive legislature of 1999-2003, the effective transfer of responsibilities for the regional health service to the Balearic Islands was passed on January 1, 2002.²² Subsequently, the Social Council of the Catalan Language (*Consell Social de la Llengua Catalana*) was established as an advisory, planning and consultation body for language policies, with broad participation from different sectors of society²³. Then, Act 5/2003²⁴ on the health system in the Balearic Islands (*Llei de Salut*) was passed, containing a series of measures related to the knowledge and use of official languages, with a planned six-month implementation schedule, including the right to receive health information in one of the official languages understood by patients; attention paid to the language needs of foreign patients; normalization measures at centres and services, and the availability of information in Catalan at private health centres.

Under the next regional conservative-majority government (2003-2007), the Spanish parliament passed Act 55/2003 on the Framework Statute of Statutory Health Workers (*Ley del estatuto marco*),²⁵ which contained important provisions concerning the use of languages other than Castilian Spanish in health care. Notably, it set out that hiring procedures could include, where applicable, accreditation of knowledge of the official language of the respective autonomous region, and deemed any language discrimination a very serious offence.

Notwithstanding, it was not until the following legislative term (2007-2011)—once again under a progressive majority—that Decree 24/2009²⁶ was passed. This legislation

21. STSJ Illes Balears (contencioso), February 23, 2010.

22. RD 1478/2001, de 27 de diciembre, sobre traspaso a la Comunidad Autónoma de las Illes Balears de las funciones y servicios del Instituto Nacional de la Salud (BOE n 311, December 28).

23. Decret 64/2002, de 3 de maig, de creació del Consell Social de la Llengua Catalana (BOIB n 56, May 9).

24. De 4 d'abril, de salut de les Illes Balears (BOIB n 55, April 22, 2003).

25. Ley 55/2003, de 16 de diciembre, *del Estatuto Marco del personal estatutario de los servicios de salud* (BOE n 301, December 17).

26. De 27 de març, *pel qual es regula l'exigència de coneixements de llengua catalana en els procediments selectius d'accés i de mobilitat relatius a la funció pública estatutària i per ocupar llocs de treball que es convoquin en el sector públic sanitari de la Comunitat Autònoma de les Illes Balears* (BOIB n 46, March 31 2009).

regulated the general requirement of speaking Catalan in the public health sector for the first time (Ballester Cardell, 2018, p. 61-63). Although a period of two years was granted for language level accreditation, and there was a flexible system of exemptions, the passing of the regulations led to protests among health care workers (Nadal, 2010, p. 316-330). At the time, the high number of staff from other autonomous regions working at different centres and facilities in the health service was highlighted, as well as the reluctance by some in the sector to accept the new language regulations for job recruitment and promotion within the public health service.

Concurrently, the legal debate was primarily focussed on two points. For non-health-care staff (management and administrative employees), the regulations set out a level of Catalan below what was generally established for other regional administration workers, and it was not reasonable to allow differential treatment of two categories of public employees who effectively performed the same duties. In turn, a debate arose around the provision, laying out two exceptions to the general Catalan language knowledge requirement for both hiring and mobility vacancies, namely (a) where health care provision could be effected by a lack of available professionals and (b) where national or international researchers and scientists were to be hired. Only the latter instance was covered by law (Article 50.1.f in Act 3/2007 on the Civil Service, as it stood²⁷), since the Act did not set out exceptional circumstances, due to lack of available professionals.²⁸

To ease tensions, the director general of the health service issued several resolutions—the first on March 31, 2009—to grant a three-year moratorium on the requirement of candidates in the hiring and mobility procedures for health care staff in certain categories to know Catalan.²⁹

Deemed an infringement of the rights set out in Articles 14 and 23.2 of the Spanish Constitution, Decree 24/2009 of March 27³⁰ and the Resolution of March 31, 2009³¹ issued by the director general were challenged in a special procedure, to protect the fundamental rights of the individual. The ruling handed down by the Chamber of Contentious Administrative Law of the High Court of Justice of the Balearic Islands on September 14, 2009 stated, however, that the Decree and Resolution were in line with the cited constitutional principles, deeming there to be a reasonable and objective justification for exempting

27. De 27 de març, *de la Funció Pública de la comunitat autònoma de les Illes Balears* (BOIB n 49, April 3, 2007).

28. These questions were analysed in previous statutory Ruling 33/2009 from the Advisory Council of the Balearic Islands: <http://www.consellconsultiu.es/Dictamen.aspx?ID=3250> (last accessed on 29 July 2019).

29. Later, the resolutions of April 14 and December 29, 2009 were issued, which also established a three-year exemption for physicians in different specializations.

30. *Supra* note 26.

31. *Resolució del director general del Servei de Salut per la qual es dispensa de l'exigibilitat de coneixements de català en els procediments de selecció, provisió i mobilitat corresponents a determinades categories* (BOIB n 58, April 21, 2009).

individuals in recruitment and mobility processes for certain professional categories from the requirement to know Catalan. This resolution was confirmed by the ruling issued by the Third Chamber of Contentious Administrative Law at the Supreme Court on February 2011³².

Throughout the following legislature—the 8th (2011-2015)—the conservative majority government adopted a series of measures limiting Catalan in institutions, education and the public sphere (Ballester Cardell, 2016, p. 91). Act 9/2012³³ modified Act 3/2007 on the civil service and removed the requirement to speak Catalan to enter the civil service workforce, claiming that the language requirement stopped the best professionals from joining the health service, the Act also repealed Decree 24/2009³⁴. Moreover, Act 9/2012 reformulated certain provisions of Act 3/1986³⁵ on language normalization, with the aim of weakening the status of Catalan as a usual language within the regional administration. In practice, political directives from this period not only represented a specific modification of these laws, but were also intended to be a comprehensive reform of the legal framework for language in the Balearic Islands. These changes limited the usual oral and written use of Catalan and lowered its status as an official autochthonous language. Many areas were affected, though the modifications implemented during this period mainly impacted the use of Catalan in dealings with the public administration and, particularly, in the area of education. Significantly, the *de facto* immobilization of the *Consell Social de la Llengua Catalana* took place during this time, with the body not having convened for four straight years.³⁶

New, more favourable scenario of the 9th Legislature (2015-2019)

The 2015 election led to the formation of a new progressive left-wing government, due to the signing of a governance agreement for the Balearic Islands.³⁷ This agreement included a commitment to promote the normalization of Catalan in all areas, reactivate the *Consell Social de la Llengua Catalana* and represented a return to a favourable consensus with regard to Catalan.

Along these lines, Act 1/2016 was passed, modifying the preceding Act (1986)³⁸ on Language Normalization in the Balearic Islands. The Act was a return to the text agreed

32. STS Madrid (Contencioso), February 23, 2011.

33. De 19 de juliol, *de modificació de la llei 3/2007, de 27 de març, de la funció pública de la comunitat autònoma de les Illes Balears* (BOIB n 106, July 21, 2012).

34. *Supra* note 30.

35. *Supra* note 11.

36. At the same time, national politics became ever more hostile to Catalan with the start of the pro-sovereignty process in Catalonia, which emerged due to Constitutional Court Ruling 31/2010 modifying the Statute approved by the 2006 referendum.

37. *Acords de Governabilitat per a les Illes Balears*: <http://www.caib.es/govern/sac/fitxa.do?codi=2521219&coduo=151&lang=ca> (last accessed on July 16, 2019).

38. De 3 de febrer, *de modificació de la Llei 3/1986, de 29 d'abril, de normalització lingüística de les Illes Balears* (BOIB n 18, February 6, 2016).

by all parties with parliamentary representation in 1986. Similarly, Act 4/2016 on language competency measures: *Llei de mesures de capacitació lingüística*,³⁹ aimed at fostering the use of Catalan in the civil service, reinstated the general requirement of Catalan to join, and for promotion within, the civil service. The stated aim of this legislation was the right of citizens to receive service in the official language of their choice, in keeping with Article 4.3 of the Statute of Autonomy.⁴⁰

In this new context, the language regulations for health service management and bodies were once again examined from an awareness of the sector's complex nature: the language rights of users needed to be reconciled without any detrimental impact to care duties, alongside the series of controversies from 2009. For this reason, the authorities decided to include the *Consell Social de la Llengua Catalana*—which had been reconvened in October 2015 after four years of inactivity—with a renewed board that included representation from the regional department of health.

The *Consell* approved an action plan for language policy over the five-year period of 2016-2021 at its July 7, 2016 session, which highlighted general difficulties regarding the right to use Catalan (specifically in the health and care environments) and proposed a series of actions to resolve these problems. During the same meeting, it was agreed that the Sectorial Commission on Health would be established to “*avaluar les problemàtiques i les necessitats específiques del sector sanitari i detectar les millors estratègies per incidir-hi a fi de planificar de forma més adequada l'execució de les actuacions en aquest àmbit amb l'objectiu de garantir els drets lingüístics dels ciutadans*” [assess the problems and specific needs of the health care sector, and find the best strategies to act within it so as to more suitably plan the implementation of activities in this sphere to ensure the language rights of citizens].⁴¹

Thus, based on Act 4/2016,⁴² the regional government released a first draft of a decree on September 2016, to reintroduce the regulations governing language skills and training of workers in the health care service of the Balearic Islands.⁴³ Based on the likely reluctant internal responses to language conditions for hiring, the government prepared a new draft on February 2017 that included a two-year moratorium from the effective date of the decree before making the requirement for Catalan language proficiency levels operative and released

39. De 6 d'abril, *de mesures de capacitació lingüística per a la recuperació de l'ús del català en l'àmbit de la funció pública* (BOIB n 46, April 12, 2016).

40. *Supra* note 4.

41. The composition and proposals of the commission, chaired by Isidor Mari, can be found in the document entitled *Anàlisi de la situació lingüística del sector sanitari de les Illes Balears* [Analysis of the Language Situation in the Health Care Sector of the Balearic Islands].

42. *Supra* note 39. This legislation repealed Act 9/2012 and recovered the favourable framework for Catalan set out in Act 3/2007.

43. The process for submitting arguments was then closed at that time.

it for public consultation. The Sectorial Commission on Health met on the same date and put forward certain objections. The two-year moratorium was publicly criticized by civic institutions in favour of Catalan, which did not see how a new postponement regarding the equal footing of users' language rights could be justified. The arguments against implementing the language requirements for hiring staff stated that there would be no candidates to be interviewed for many positions and that jobs would remain vacant. Those in favour of the language requirements argued that these positions could always be temporarily filled, instead of postponing language requirements throughout the health system.

A month later, Decree 11/2017⁴⁴ set out the general framework for Catalan requirements to work in the civil service and be employed in the public administration of the Balearic Islands, excluding health service staff (Art. 1.2). The Sectorial Commission on Health concluded its work in June 2017 and submitted its proposals to the government. Meanwhile, in light of the upcoming competitive exams for staff positions, the director general of the public health service issued a resolution in August 2017 waiving the Catalan knowledge requirement in recruitment, placement and mobility procedures for certain professional categories. This led to a wave of protests from all parties and institutions that supported the reintroduction of Catalan requirements, deeming the decision contrary to the governance agreement. The STEI (the majority union of public education professors in the Balearic Islands union) lodged an appeal against the resolution, which was revoked later the same year.

The government presented the decree draft on September 26, which was in turn submitted to the health care sector committee on September 29, stating that, as a general rule, the requirement for Catalan would be maintained, although it could be accredited within two years and there would be exemptions for hard-to-fill positions. The SIMEBAL medical union and SATSE nursing union opposed the plan, insisting there was a shortage of professionals. Nonetheless, they also acknowledged that 1,500 nursing candidates from the interim employee pool already held language accreditation.

The plenary session of the *Consell Social de la Llengua Catalana* met in October and passed the proposals submitted by the health commission comprising institutional managers from the health service and language normalization, professionals from the health care sector on the different islands, language specialists, union representatives from the *Consell Social de la Llengua Catalana* and representatives from cultural communities of new residents in the Balearic Islands. The document entitled *Anàlisi de la situació lingüística del sector sanitari a les Illes Balears* [Analysis of the Language Situation in the Health Care Sector of the Balearic Islands]⁴⁵ examined the situation from three complementary perspectives,

44. De 24 de març, *d'exigència del coneixement de la llengua catalana en els procediments selectius d'accés a la funció pública i per ocupar llocs de treball de l'Administració de la Comunitat Autònoma de les Illes Balears* (BOIB n 36, March 25, 2017).

45. Available online at: <http://www.caib.cat/govern/rest/arxiu/3216018> (last accessed on July 16, 2019).

primarily that of patients and users for whom the health service has a responsibility and who must be able to use both official languages indistinctly within it. Secondly, the document looked at health service professionals (who must be able to acquire language skills to ensure competent communication as an inherent tool of professional aptitude). Finally, the above-mentioned document examined the perspective of political and technical representatives who must facilitate the necessary conditions, so that top quality care and the full respect of users' linguistic rights could be assured. The starting point for the analysis read:

La comunicació amb els pacients i usuaris –i per tant, la intercomprensió lingüística—és una part central i indissociable de la qualitat de l'assistència sanitària. [Per tant,] no té sentit que a vegades es pretengui contraposar la selecció de personal sanitari competent a la necessitat de valorar la seva competència lingüística en les condicions per a l'accés, la promoció o el trasllat. La competència lingüística és una part central de la competència professional, i el personal de salut només és plenament competent si a la competència específica de la seva especialitat hi suma la competència en la llengua o les llengües oficials del territori on exerceix.

[Communication with patients and users and, therefore, language cross-comprehension, is a central and inherent part of quality health care. [Therefore] it does not make sense that, at times, the hiring of competent health care staff is pitted against the need to assess their language skills as per the terms for hiring, promotion and transfer. Language competence is a central part of professional competence, and health staff can only be fully competent if the specific skill of their speciality includes skills in the official language or languages from the territory where they practise.]⁴⁶

There was, therefore, a shared aim to ensure quality:

La qualitat general –i per tant, també lingüística— de l'atenció sanitària interessa a tots els ciutadans com a pacients o usuaris, a tots els professionals i responsables dels serveis de salut i per aquest motiu també als òrgans encarregats de la normalització lingüística. És en aquest context que cal conjuntar els esforços per fer efectiu el dret dels usuaris a ser atesos per igual en qualsevol de les llengües oficials, i afavorir en la mesura que es pugui la incorporació a l'atenció sanitària d'altres llengües presents en la nostra societat.

[General quality in health care, and therefore language quality as well, is of interest to all citizens as patients or users, to all health care professionals and directors and, for this reason, it is also of interest to bodies charged with language normalization. It is in this context that joint efforts are made, to ensure the effective nature of the right of users to receive service in the same way in any of the official languages and, as far as possible, favour the inclusion of other languages spoken in our society within health care.]⁴⁷

46. The commission cites in support of this thesis the work of Brindley, Smith, Cardinal and LeBlanc, "Improving medical communication with patients and families: Skills for a complex (and multilingual) clinical world", published in the *Canadian Respiratory Journal* (vol. 21, n° 2, March-April 2014), which reviews 30 prior studies on the importance of medical communication.

47. In light of the arguments that overplayed the problems of health care staff to treat users in Catalan, the commission highlighted data from a 2008 study which showed that 80% of staff understood Catalan (and could facilitate patients using the language) and that only 10% showed any reluctance to using Catalan.

Starting from this objective, the commission document set out a gradual action plan and the foundation for a communication plan aimed at health system users and staff, to raise awareness of the general interest and overcome any possible resistance.⁴⁸ The index of the measures is sufficiently explicit with respect to the scope of the proposed actions:

- Actions of an informative and organizational nature
- Actions aimed at ensuring the availability of resources, linguistic models and training offerings
- Dissemination of training offerings and facilitating resources
- Actions relating to the management of staff
- Guidelines on the use of languages in the different situations and modes of communication
- Inclusion of the actions in the ordinary systems of planning, programming and budgeting

A new public controversy

There would not, however, be a communication plan in support of equal use of official languages in health care, but rather a campaign of total opposition led by the SIMEBAL union, which submitted arguments against the decree,⁴⁹ insisting that the language requirement would discourage health care professionals from other regions from participating in the hiring or transfer processes and could lead to problems filling positions in the Balearic Islands, putting the constitutional right to health at risk.⁵⁰ In turn, the University of the Balearic Islands, the STEI union, *Obra Cultural Balear*⁵¹ and *Joves de Mallorca per la Llengua*⁵² submitted arguments against the two-year moratorium in applying the language requirement.

Discrepancies were evident at the sessions of the health care sector committee, which intervened in the passing of the decree. Union opposition was clear at the meeting of November 17, 2017 where four participants—CSIF, CCOO, SIMEBAL and SATSE—voted against the decree and two—UGT and USAE—abstained. In contrast, after negotiations

48. Based largely on the measures in the 2016-2021 action plan from the *Consell Social* referred to earlier.

49. See: <https://simebal.com/proyecto-decreto-acreditacion-catalan>, last accessed on July 16, 2019.

50. Interestingly, SIMEBAL has never expressed concern for other real reasons that impact the availability of medical staff, such as the shortage and high cost of housing in the Balearic Islands or oversaturation of health services in the summer, when millions of tourists visit the islands.

51. The most representative association in the defence of language and culture on the islands.

52. A youth movement in defence of language rights.

led to technical amendments and other changes, the stance of certain unions changed at the February 9, 2018 session (where four unions voted in favour and two against).

The opposition from right-wing political parties to the equal treatment of Castilian Spanish and other official languages was so extreme that the debate spread to non-Catalan-speaking areas. The Spanish Minister of Health (*Partido Popular*), Dolors Montserrat, referred to the decree as *Dantesque*, stating that obliging health workers to know the other official language would lead to a loss of talented workers.⁵³

Meanwhile, social institutions and political parties opposed to the regulations called for demonstrations, which failed to attract high turnouts. Between one and two thousand people demonstrated on the streets of Palma on February 18, 2018, called out by the *Mos Movem* [Let's Go] platform and supported by the *Partido Popular*, *Ciudadanos* and *Actúa Baleares*⁵⁴, under the banner *Ets idiomes no salven vides* [Languages do not save lives].⁵⁵

On the legal front, the passage of the regulations was finalized with Opinion 25/2018 of March 13, issued by the Advisory Council and agreed by majority, with three individual votes.⁵⁶ It was later approved by the Regional Government Cabinet Decree 8/2018 of March 23, on Language Competency of Statutory Staff in the Health Service of the Balearic Islands: *Decret de capacitació lingüística*.⁵⁷

Main characteristics of the approved decree

The approved decree falls under a regulatory framework comprising two complementary blocks: language legislation and civil service regulations.⁵⁸ Health sector regulations also

53. "Montserrat ve "dantesco" que el Govern pida el catalán en el Ib-Salut", *Diario de Mallorca*, February 9, 2018: <https://www.diariodemallorca.es/mallorca/2018/02/09/montserrat-ve-dantescoque-govern-pida/1286319.html> (last accessed on July 16, 2019).

54. A movement close to the far right.

55. Significantly, the words in bold in *Mos movem* and *Ets idiomes no salven vides* are signs of anti-Catalan linguistic particularism in the Balearic Islands.

56. Dictamen 25/2018, de 13 de març, *relatiu al Projecte de decret pel qual es regula la capacitació lingüística del personal estatutari del Servei de Salut de les Illes Balears*. See: <http://www.consellconsultiu.es/Dictamen.aspx?ID=15441> (last accessed on July 29, 2019).

57. (BOIB n 37, Mar 24, 2018).

58. In terms of language, statutory regulations (Articles 4, 14.3 and 35), the Language Normalization Act (Articles 1.2.a, 6, 9 and 16.1 and 2), the current Common Administrative Procedure Act 39/2015 (Art. 15.2) and the Act on the Legal System in the autonomous region of the Balearic Islands 3/2003 (Art. 43 and 44) set out the language rights of citizens and the corresponding obligations for public administrations, with the mandate to make everyday use of Catalan effective in official and administrative spheres. With regard to the civil service and public employee block, both national and regional legislation refers to the language rights of citizens and language knowledge of staff. In this sense, the basic statute of public employees insists on the language skills of employees (Art. 56.2), and Act 3/2007 on the Civil Service in the Balearic Islands establishes an accreditation requirement for Catalan (Art. 30.d and 50.1f).

contain certain specific provisions relating to the knowledge and use of official languages.⁵⁹ It should also be pointed out that under the *European Charter for Regional or Minority Languages* of the Council of Europe⁶⁰—in force in Spain since August 1, 2001—Spain is obliged to promote the use of regional or minority languages and ensure that speakers are able to use them in health services. The recommendations of the Committee of Ministers of the Council of Europe have twice insisted (2012 and 2016) on the need for Spain to effectively implement its commitment.⁶¹

The regulation contained in Decree 8/2018⁶² sets out the Catalan language levels that must be accredited in all statutory staff recruitment procedures in the health service and how they should be accredited. It also states that accreditation of levels may be deferred for up to two years in specific cases. To take part in mobility procedures, the Catalan level corresponding to each requested position must be accredited within a maximum period of two years; otherwise, candidates may not participate in mobility offers or initially benefit from the right to certain salary bonus payments. Accreditation of levels in Catalan above those set as a requirement shall be deemed a merit and given the necessary consideration. Furthermore, a language planning service was established and plans laid out for the approval of a language training and development plan, as well as a welcome program for those who do not have the accredited language level.

Nonetheless, it should be noted that the option⁶³ to establish a system of lower requirements for levels of Catalan language skills for employees in the health service, in comparison to workers in the regional civil service, set out in previous regulations for health staff remains.⁶⁴ It would seem that the measure aims to find a balance between effective language option rights and the challenges in filling open positions.⁶⁵

59. Article 5.2 of Act 5/2003 of April 4 on Health Care in the Balearic Islands sets out that health service users: [have the right to receive health information in the most appropriate way for its comprehension and in one of the official languages of the autonomous region, ensuring that it is intelligible for patients]; additional provision five states that [the Health Service of the Balearic Islands shall take the necessary steps to normalize the use of Catalan in health centres and services] [loose translation]. Finally, national Act 55/2003 of December 16, on the Framework Statute of Statutory Staff in Health Services, establishes in Article 30.2 that: [hiring procedures, their contents and tests must be appropriate for the duties to be undertaken in the corresponding positions including, where applicable, accreditation of the official language of the respective autonomous region in the manner set out in the applicable regional regulations] [loose translation].

60. ETS No 148 (November 5, 1992),

61. The first time: *Ensure the presence of all regional or minority languages in the provision of health care service* (Recommendation of October 24, 2012). The second time (January 20, 2016): *Continue to implement measures to ensure the presence of co-official languages in public services, especially in health care services*. See: [https://www.coe.int/en/web/european-charter-regional-or-minority-languages/reports-and-recommendations#%2228993157%22:\[20\]](https://www.coe.int/en/web/european-charter-regional-or-minority-languages/reports-and-recommendations#%2228993157%22:[20]) (last accessed on July 16, 2020).

62. *Supra* note 57.

63. This was already included in Decree 24/2009, *supra* note 26.

64. Enforceable from June 1, 2017 until implementing regulations are drafted for Articles 30.d and 50.1.f in Act 3/2007 of March 27, which are being implemented by this regulatory provision.

65. Advisory Council Opinion 25/2018, *supra* note 56, refers to this argument.

In turn, a special regulation was established for how to accredit the required Catalan level for the categories and specializations of health care workers which establishes that candidates may apply without having accreditation for the level of Catalan and will have a two-year moratorium to present it, from the time they accept the job appointment. For staff who take up permanent positions, the consequences of not accrediting their language level within the set deadline would be the inability to take part in transfer offers or initially continue along a professional trajectory.

This leads one to believe that, with a view to combining care requirements and citizens' rights to use their own language, the Decree temporarily and tentatively sets out how, when and at what level the Catalan language requirement is enforced, in line with the department or category.⁶⁶

Latest reactions to the publication of the decree

Approval of Decree 8/2018⁶⁷ reignited debate in the Balearic Islands surrounding language rights and duties, specifically regarding accreditation of Catalan as a merit or a requirement to work in the civil service.

After 35 years of official status, institutions such as the University of the Balearic Islands and *Obra Cultural Balear* are opposed to a new moratorium for citizens exercising their language rights and have sounded the alarm over backward steps regarding language in public administrations. The STEI union asserts that all statutory staff in the health service should accredit their knowledge of Catalan without exception. In turn, certain professional sectors have expressed their opposition through rallies and demonstrations against the new regulations on language competence in the health sector.

At the institutional level, the Central Government Delegation for the Balearic Islands lodged a complaint against the Decree with the High Court of Justice of the Balearic Islands in May 2018. The ensuing debate was seen and heard in the Spanish media, especially opinions opposing the regulations (Payeras, 2018). The *Ciudadanos* [Citizens Party] parliamentary group even presented a draft bill to ensure equal footing for recruitment and promotion in the civil service without any language discrimination to the Bureau of the Congress of Deputies, with a view to modifying Article 56.2 of the basic statute of public employees and expressly recognizing that knowledge of the co-official language may only be deemed a merit in the hiring of public employees. However, the initiative failed.

66. This seems to be the basis of the statement formulated in the aforementioned Opinion 25/2018 issued by the Advisory Board. This would also be a generous interpretation of the gradual nature referred to by the proposals from the Commission for Health.

67. *Supra* note 57.

Although the central government withdrew its appeal against the Decree on December 2018, the tension created by this new political front opposing the equal footing of language rights and duties in the civil service (beyond the specific area of health service staff) highlights, once again, that the Spanish state does not support egalitarian plurilingualism. In addition, the legal debate on the requirement of the knowledge of the Catalan language in health care remains active; both the independent trade union of civil servants (CSIF) and the STEI union—with opposite approaches, but similar legal arguments—intended to annul the Balearic decree.

The status of the autochthonous language of the Balearic Islands remains “*fràgil, inestable, perquè és una llengua desprotegida, amb avanços i retrocessos, que depèn massa de les contingències polítiques i ideològiques, dels avatars polítics i dels jocs de les majories*” [fragile and unstable, as it is an unprotected language that sees progress and setbacks that depend far too much on political and ideological vagaries, political vicissitudes and the gambits of majorities] (Colom Pastor, 2011, p. 12-13).

There are clear signs that the situation is far from resolved. In fact, just a few months ago, a doctor in Manacor refused to treat a 76-year-old woman who did not speak in Castilian Spanish.⁶⁸ In the region of Valencia, where Castilian Spanish and the Valencian dialect of Catalan also share official status, there are similar tensions around the use of the autochthonous language in the health service and the need for health workers to accredit their language level. Moreover, the argument that *languages cannot heal* reappears every so often in public debate.

As happened with Decree 24/2009⁶⁹, the High Court of Justice of the Balearic Islands has ruled again on the plurilingual reality of Spain and on the level of knowledge of the Catalan language required for access to the civil service, particularly in the health field. Sentences 14 and 15/2020, of January 16, of the Administrative Litigation Chamber of the High Court of Justice, resolve separate administrative proceedings—instances, respectively, by the STEI and the CSIF—in which it is requested that certain precepts of Decree 8/2018⁷⁰ be declared null and void, for violation of the principle of regulatory hierarchy.

The Court assumes that the consideration of Catalan as the language of the Balearic Islands justifies the adoption of measures to extend the knowledge and use of the Catalan language to provide citizens with quality services. In addition, they reaffirm that the requirement of a certain level of knowledge of Catalan for access to the civil service in the Balearic Islands fits within the constitutional legal framework, considering both the mandatory use of

68. <https://www.dbalears.cat/balears/2019/05/17/327227/metge-del-pac-manacor-pacient-anys-quiere-ser-atendida-debera-hablar-espanol.html> (last accessed on July 16, 2019).

69. *Supra* note 26.

70. *Supra* note 57.

the native language and the validity and efficiency of administrative actions in the Catalan language, or the right of citizens to use Catalan in their relations with the administration. They assure that the language training of public employees contributes to articulating Catalan as an internal or working language of the administration and to using one's own language as a service language. The Chamber links the process of linguistic normalization to progression in the level of knowledge required, although they admit that this gradual advancement can be conditioned precisely when higher priority social interests (such as the health service) can be compromised. And they conclude that the citizens' constitutional right to be served in Catalan, along with other reasons—such as administrative efficiency and linguistic normalization—require that the autonomous administration grant legal relevance to the knowledge of the Catalan language for access to the civil service.

Accordingly, the High Court of Justice of the Balearic Islands claims that knowledge of the Catalan language can be established as a general requirement and points out that this is a decision of a legislator. Therefore, the way in which language competence is established, the possible temporary graduation of it for certain public employees or the exception, as a temporary or indefinite measure, must be made through a rule having the level and force of a law. And, therefore, the sentences establish that those parts of the Decree that exempt from accrediting the knowledge of the Catalan language for the access to the public service and those that turn the linguistic competence in condition to accede to the economic rights and the mobility in professional careers are void for breaching the principle of normative hierarchy.

Conclusion

The linguistic pluralism established in the Spanish Constitution and Statutes of Autonomy set out basic regulations for official languages and include the mandate for public authorities to ensure an equal standing for use of each autochthonous language and the official language of the state as a top priority. Nonetheless, the process of language normalization requires positive action by institutions across different sectors of society. The language rights of citizens when dealing with public institutions will only be effective if the structures of the latter are adapted, and they hire public employees who are able to meet the communication requirements of users. The Constitutional Court deems that the requirement for language knowledge among public employees, either as a merit or as a requirement, is in line with constitutional tenets as long as it is enforced on the principle of equality, without any discriminatory treatment, and that the required language level is objectively reasonable and proportionate to the technical or professional duties to be performed.

Good communication between patients, users and health professionals is clearly essential to guarantee quality health care and services. It is therefore indispensable to ensure the

language competence of health care staff and for it to be taken into account in the hiring, promotion and transfer requirements as part of professional career paths. The right of users to be served in any of the official languages requires necessary steps be taken to ensure the comprehensive professional competency—including language skills—of health care staff.

The specificities of the public health system in the Balearic Islands may justify that the requirement for Catalan language competence be gradually and progressively regulated given the traditional shortage of health care professionals. Nonetheless, this must be finalized within a reasonable timeframe, so that subjective rights are not indefinitely suspended (Vernet i Llobet & Pou i Pujolràs, 2006, p. 162-163), given the language's many years of official status.⁷¹

The recent judgments of the Administrative Litigation Chamber of the High Court of Justice of the Balearic Islands acknowledge that the language competence of public employees will make it possible to habilitate the use of Catalan as a language with service capacity. They are also cognizant that the constitutional right of users to be addressed in their language and the statutory mandate to establish measures of support and linguistic normalization require that legal relevance be given to the knowledge of Catalan by means of a law. And they assume that it is the responsibility of the institutions of the autonomous community to establish the knowledge of the Catalan language as a general requirement for access to the civil service. Only in this way will it be possible to advance the equality of treatment of all users and full recognition of the linguistic rights of citizens.

The Sectorial Commission on Health stated that: “*la complexitat de la situació sociolingüística de les Balears justifica l'adopció de mesures graduals en la consecució de les competències lingüístiques, però en cap cas un ajornament general o una renúncia*” [the complex nature of the sociolinguistic situation of the Balearic Islands justifies adopting gradual measures in attaining language competence, although in no way does it justify a general postponement or abandonment thereof].⁷²

In response to those who claim that *languages don't save lives*, we are convinced that languages heal. Every single one of them. As long as they are used, of course.⁷³

71. “*Els drets lingüístics són directament efectius a partir del moment en què són articulats normativament per part del corresponent legislador autonòmic. El caràcter diferit del seu exercici ho és per raó, exclusivament, de la dificultat d'adaptar immediatament les estructures de les Administracions públiques a la nova situació juridicolingüística, de manera que el caràcter progressiu de l'adaptació assumit pel legislador autonòmic no és sinó conseqüència del reconeixement d'aquestes dificultats*” [Language rights are directly effective from the time they are set out in regulations by the corresponding regional legislature. The deferred nature of their implementation is solely due to the difficulty in immediately adapting the structure of public administrations to the new legal and linguistic circumstances, meaning that the progressive nature of the adaptation recognized by the regional legislature is merely a consequence of acknowledging this difficulty] (López Basaguren, 1988, p. 67-68).

72. Document *Anàlisi de la situació lingüística*, issued by the Sectorial Commission on Health of the Social Council for the Catalan Language.

73. Headline of the article by Isidor Mari (2018) published on July 9, 2018.

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