New minorities and linguistic diversity: Some reflections from the Spanish and Basque perspectives

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Abstract

Human rights of immigrants have not been directly related to rights recognised to members of traditional minorities in some constitutional or international frameworks. However, immigration processes entail new demands of integrating linguistic rights within the public space and institutions. The Spanish example can open new challenges to multiculturalist approaches, since it brings together traditional and new linguistic diversity in a very significant level. In particular, new challenges arise in sub-state autonomous entities, as is the case in the Basque country, where linguistic diversity has been a traditional element of the society. These new multilingual realities challenge the traditional view of diversity and force us to rethink the substantial contents of some fundamental rights in order to accommodate democratically linguistic diversity in post-modern societies.

1. Introduction

Linguistic plurality challenges multicultural policies as do religious or cultural diversity. Democratic management of linguistic differences happens to be one of the most difficult tasks of the current multicultural policies, since the western states still heavily remain on identities shaped by languages. Today's migratory flows tend to emphasize the traditional linguistic diversity of some societies. The confluence of traditional and new linguistic diversity in some plural societies (for example, Canada, Spain, Italy or Belgium) creates new kinds of problems regarding the balance between the promotion of native languages and the acceptance of immigrants' languages in the public space[1].

From this perspective, Spain constitutes one of the most interesting cases in Europe today, since it is home to very significant linguistic minorities, which are constitutionally protected, and it is going through a fast and new process of immigration. The model of Canada's multiculturalism is also very useful as a reference to this experience. Canada, also being a complex society, has both significant historic and new linguistic minorities. Our purpose in this paper is to formulate some reflections on the relationship between traditional and new minorities' linguistic rights based on the current situation in the Basque Country, and instrumentally using the Canadian constitutional experience as a reference of comparison. With that aim, we will focus first on the effects of immigration on linguistic diversity. After that, we will refer to the particular experience of the educational system in the Basque Autonomous Community. Finally, we will try to reflect on the most suitable way of protecting linguistic rights in multicultural societies,

[1] S. Vertovec and S. Wessendorf, *Migration and Cultural, Linguistic and Religious Diversity in Europe. An Overview of issues and trends* (International Migration, Integration and Cohesion, 2004), 40. Available at: http://www.imiscoe.org/publications/workingpapers/documents/migration_diversity.pdf.

referring in our reasoning to the Canadian model as a point for comparison. At the end of the paper we will draw some basic policy recommendations.

2. Immigration and traditional linguistic minorities

Since the nineteenth century, language had begun to stand out as the principal element of collective identities. Whereas in contemporary societies it is generally considered that the practice of religion can largely be reduced to the private sphere, it is certain that language is a necessary tool for the function of the political community[2]. The importance of linguistic questions in our societies is derived not only from their function in the organization of political communities. For most people, language is also an essential component of their identity[3]. Its loss, atrophy, inequality or regression are motives for personal and group traumas and for social conflicts[4].

Through legal or constitutional recognition, states make a choice of (linguistic) identity, according to the will of the majority (and, in some particular cases, of some specific minorities). This defines the privileged identity and the model of belonging to that particular community considered[5] whereas the linguistic reference of an increasing number of old and new citizens living in a minority condition is not considered. This has entailed the promotion of some specific languages considered as official, national, or state languages, and the political exclusion of the rest, whether they are traditionally spoken in the country or not. Although law is a moderately effective instrument at affecting linguistic processes[6], legal arrangements have a very significant symbolic value and a veritable influence on social behaviours.

Nevertheless, a trend to consider linguistic plurality as an important value to be preserved can also be identified. Indeed, linguistic or cultural diversity is a positive value in the current political discourse. The European Union has included this idea in its institutional motto ("united in diversity") and certain international legal or policy documents answer, at least partly, to this thought. In this respect, the most relevant documents at the European level are the European

[2] R. Rubio-Marin, "Language Rights: Exploring the Competing Rationales", in W. Kymlicka and A. Patten (eds.) *Language Rights and Political Theory* (Oxford University Press, Oxford, 2003), 55 ; A. Patten, "What Kind of Bilingualism?", in W. Kymlicka and A. Patten (eds.) *Language Rights and Political Theory* (Oxford University Press, Oxford, 2003), 296.
[3] A. Patten, "What Kind of Bilingualism?", 313; G. Hogan-Brun and S. Wolff (eds.) *Minority Languages in Europe. Frameworks, Status, Prospects* (Palgrave Macmillan, New York, 2003), 3; M. Blake, "Language Death and Liberal Politics, in W. Kymlicka and A. Patten (eds.) *Language Rights and Political Theory* (Oxford University Press, Oxford, 2003), 213.
[4] M. Kontra, "Some Reflections on the Nature of Language and its Regulation", 6 *International Journal on Minority and Group Rights* [Special Issue on the Linguistic Rights of Minorities, ed. by J. Packer] (1999), 281.
[5] W. Kymlicka, and A. Patten (eds.) *Language Rights and Political Theory*, 6.

Charter on Regional or Minority Languages (ECRML), the Framework Convention for the protection of National Minorities (FCNM), and diverse documents adopted in the frame of the Organization for Security and Cooperation in Europe (OSCE).[7]

Parallel to this idea, another trend can be identified in today's political practice. This is the reinforcement of identity between states and the dominant national languages. Thus, in recent years some countries have increasingly adopted novel legislation in order to guarantee the internal and external weight of the dominant national language. On occasions this involves clear processes of re-nationalization after a period of linguistic assimilation, (for example, Estonia, Latvia or Ukraine). In other cases, there is a clear state promotion of a language already recognized as official and exercising a powerful position. This would be the case of the recent legislation adopted in favour of French in France, and some of the requirements of national language knowledge for naturalization of foreigners in Germany, the United Kingdom or the Netherlands.

A third trend can be perceived, consisting in the adoption of an international *lingua franca*. In Europe, some states have officially incorporated a non-native language into the constitutional recognition (in the case of Malta for English, Luxembourg for French, or Belarus for Russian). Other countries adapt their practice to this reality without formal recognition (for example, the use of English on road signs in countries such as Greece, Bosnia and Herzegovina, etc). The reality shows that in practice, English has gained all possible ground over other languages, although national laws are reluctant to reflect it.

Besides these general tendencies, it is clear that today's migratory processes are affecting the traditional linguistic dynamics of many western societies. If we try to systematically expose the linguistic dynamics that are affected by population movements, we can identify the following consequences in respect to both dominant and non-dominant languages:

a) In respect to the state (dominant or official) language

1. The main and most visible effect is that immigrants tend to acquire the dominant language of the environment which they join. In almost all cases this will mean acquisition of the official

[6] G. Hogan-Brun and S. Wolff (eds.) *Minority Languages in Europe*, 5.
[7] The Oslo Recommendations regarding the Linguistic Rights of National Minorities, adopted in February 1998 by a group of experts gathered by the OSCE High Commissioner for National Minorities. Also, the Hague Recommendations regarding the Education Rights of National Minorities, adopted in October 1996 within the same framework.

language of the State of residence[8], or at the sub-national level, if there is only one official language (this being, for instance, the case of French in the province of Québec). However, in territories where two official languages coexist, primary acquisition of one or the other one will depend on the sociolinguistic situation. In almost all cases, the first language acquired will be the official language at the state level (e.g. Spanish in Galicia and the Basque Country, Italian in Alto Adige, English in Scotland and Wales) or the majority one among official state languages (Finnish in Finland, English in Ireland, French in the Brussels region).

2. The need and demand for a *lingua franca* for communication between linguistic communities has increased. Normally this also works to the benefit of the state language, although on occasions other different languages can benefit from these facts (see below no. 3).

b) In respect to (non-dominant or non-official) immigrant languages

3. In some cases the need of a common *lingua franca* either with the native groups or among immigrant communities can also benefit a specific foreign (immigrant) language. This can be due to specific historical conditions (the case of Russian language in some countries of the ex-USSR, being the language for interethnic communication, as it is the case in Moldova, Armenia and so forth) or to the numerical relation between new linguistic communities and the amount of bilingual people (the case of English language in the Nordic countries or in other small countries).[9] In relation to this, there is a trend of regrouping close languages around stronger or more numerous languages through the migratory process (as it is the case of many Ukrainians and Belarussians assimilating around Russian language once established in places like Latvia, Georgia, Moldova and so forth).[10]

4. Among languages of immigrants, some linguistic assimilation processes also may continue in the host society. Indeed, these assimilatory processes occur not only in regard to official host languages but also with regard to official languages of the country of origin**,** as the immigrants (although belonging to linguistic minorities in their countries), are perceived within their new country as citizens of a given state. Thus, on occasions, the migratory process or some incorrect

[8] M. Siguán, Bilingüismo y lenguas en contacto (Alianza editorial, Madrid, 2001), 226.
[9] E.J. Ruiz Veytez, "Minority languages of the Russian Federation. Perspectives for a ratification of the European Charter for Regional and Minority Languages", 6 Mercator Working Papers (2002), 29. Available at: http://www.ciemen.org/mercator/index-gb.htm.
See also the chapter on Moldova at the website of the Université de Laval (Québec), available at www.tlfq.ulaval.ca/axl/europe/moldavie.htm, p. 2.2.
[10] See, for instance, the chapter on Ukraine at www.tlfq.ulaval.ca/axl/europe/ukraine-1demo.htm

education policies help Berber or Kurdish speaking children living outside their country of origin to be respectively assimilated to Arabic or Turkish[11].

c) In respect to native minority languages

5. In some cases, the arrival of immigrants reinforces traditional assimilatory processes at the national level, since the immigrants already speak the official dominant language. This is the case for Latin American immigrants in Spain that settle in bilingual communities. Their presence undoubtedly reinforces the weight of Castilian Spanish and can be perceived as a threat to the situation of the minority language. The same could apply to English-speaking immigrants in Québec or in Wales, or French-speaking newcomers to Brittany or Alsace.

6. In other cases, the same fact reinforces minority languages in the host society, because the newcomers add new speakers to a minority traditional group. This would be the case of Italian speakers migrating to Switzerland, Spanish speaking Latino immigrants in the USA, French-speaking immigrants in Québec, or Arabic speaking immigrants in the Spanish enclaves of Ceuta and Melilla.

In any case, migratory flows bring a significant increase in the number of linguistic communities that claim a presence in the public space. Before this fact, traditional or historical minorities can adopt opposite attitudes:

a) To perceive the process as a threat to their claimed uniqueness or legitimacy. This can be due to the consideration that the foundations that legitimize protection in each case must be different, in order to avoid weakening the status already obtained. Equally, the threat can also be perceived from the moment when they can be demoted in terms of number or power with respect to the foreign immigrant communities.

b) To see the new reality as an opportunity to add support for debate in the internal state area. This can work better in the case of weaker linguistic communities.

In any case, the concurrence of immigrant languages with historical languages will make it necessary to draft a new design of public space to confront the increasing linguistic diversity. In this respect, it is necessary to reflect on new models of regulating the use of languages in the

[11] A. Hassanpour, T. Skutnabb-Kangas, and M. Chyet, "The Non-Education of Kurds: a Kurdish Perspective", 42 *International Review of Education* (1996), 372 ; S. Vertovec and S. Wessendorf, *Migration and Cultural, Linguistic and Religious Diversity in Europe*, 41.

public domain, and to challenge some traditional concepts such as the ones of 'official language' and 'linguistic minority'.

3. Linguistic diversity within bilingual frameworks: particular tendencies

Although numbers of immigrants have dramatically increased during the last years, significant immigration to Spain is a very recent factor. This sudden and quick shift from a traditional country of emigration into a new immigration society has raised many relevant issues in the public arena. Today, immigration constitutes one of the main concerns of the Spanish political agenda, although the main problems still arise over controlling immigration rather than on cultural integration.

Immigration in Spain is also very diverse in terms of countries of origin. The most frequent nationalities among the foreign residents (excluding EU citizens) are Moroccan, Romanian, Ecuadorian and Colombian.[12] The global data allows us to see the importance of the Spanish colonial past in the selection of certain immigration flows, but it also indicates new inflows from countries with little historical relation with Spain.

After the approval of the new Constitution in 1978, Spain became a highly decentralized country. Presently, political powers are distributed between the central institutions of the state and 17 autonomous communities holding a significant degree of self-government in different fields. Only the central legislative branch of government is responsible for adopting substantial legislation affecting the situation of immigrants in Spain. However at the same time, autonomous communities control ample range of social and cultural powers of great relevance in the process of integration. Thus, autonomous communities are responsible for implementation of policies in such fields like housing, regional culture, education, social welfare, health, etc.

Spain is one of the most pluralistic states in Europe regarding linguistic diversity. In fact, around 25% of Spaniards have a mother tongue language different from Castilian Spanish, the official language of the state. This high percentage shows the importance of the linguistic questions when regulating the immigration process in Spain. In fact, Spain has always been a pluralistic country with a significant level of cultural diversity and can be seen as a multinational state.

[12] General data on immigration in Spain is available at: http://extranjeros.mtas.es.

In this framework, questions surrounding language become an important factor to regulate integration models. In particular, it is very interesting to analyse the alternatives for diversity management in such areas where the minority language is other than Spanish, and a current official policy of the regional bodies is in favour of the 'normalization' process of such languages.[13]

In the case of the Basque Country, the Basque language, sharply different from Spanish, is in a minority position, being known fairly well by some 30% of the population. Given the repressive policies of the Spanish government during the greater part of the twentieth century, the Basque language was losing influence and presence in the public space. With the approval of the Act on Autonomy in 1979, one of the commitments of the new Basque Autonomous institutions has been the normalization process of the language, which takes place mainly through the educational system. According to the Act on Autonomy, in today's Basque Autonomous Community, both Basque and Spanish maintain official status. However, the presence of the Spanish language is by far predominant, given the bilingual condition of almost all the Basque speaking population and the massive presence of Spanish in the mass media sector.

The maintenance of this linguistic diversity becomes more difficult with the current processes of immigration. Although the Basque Country is not a primary area of attraction for foreign immigrants, the numbers of foreign residents have dramatically increased in the last seven years. This creates serious difficulties for the educational system of the Basque country, which is more complex due to the bilingual condition of the region.[14]

In order to facilitate the knowledge of both official languages to all students, the Basque educational system created the so-called linguistic models A, B and D. As a basic principle, parents or tutors of the children are free to determine the linguistic model they want for their children. Nevertheless, in some cases, social conditions can influence this choice. For example, if too few students are willing to follow a particular model, they could be allocated in a distant school. Public transportation to the school would be free of charge for the parents, but it can shape the final decision. Model A corresponds roughly to Spanish-speaking teaching, having Basque as a compulsory subject. Model B combines Basque and Spanish as vehicular languages

[13] The concept of normalization is used in Spain to refer to the processes of recuperation by minority languages in their presence in the public space and bringing them into an equal situation with the state language.

[14] J. Carabaña, "Los alumnus inmigrantes en le escuela española", in E. Aja and J. Arango (eds.) Veinte años de inmigración en España (CIDOB, Barcelona, 2006), 287; The percentage of foreign students within the Basque educational system has grown in the last four years from 1.36% to 5.23% of the total number of students.

in a balanced basis. Some of the subjects are taught in Basque and some others in Spanish. Finally, model D means that Basque is the vehicular language of instruction for all the subjects, apart from Spanish language and literature. Different models can be present in the same school if there is sufficient demand but may form different groups. This entire system of linguistic models is currently under deep reconsideration, but it is still in force.

In the predominant Spanish-speaking environments, those students following model A normally prove unable to speak correct Basque at the end of their educational process. This is why the A model is being challenged and why many parents choose model B or D for their children. These latter models tend to guarantee the command of the Basque language. Even in the case of the B model, students living in Spanish monolingual environments may obtain only a relatively poor level of Basque when finished with their compulsory education. Only students living in Basque-speaking environments and those following model D generally prove to have a successful command of both languages at the end of their educational process.[15]

Immigrant students show a high degree of mobility and relocate from one region to the other more easily than national students. At the same time, most of these new students move in periods different from the beginning of the school year, and they must be relocated in groups which are already formed or which follow a particular linguistic model. Besides this, among recent immigrants to the Basque country, apart from Moroccans, the bulk of newcomers are from Latin American countries, in particular Ecuador and Colombia.[16] Many of these immigrants consider native languages in their own countries as *patois* languages, with very low social prestige. This construct is normally transferred to the Basque language, especially in those Spanish-speaking areas of the Basque Country where Spanish is the main tool of social and cultural integration. Keeping this in mind, as well as fearing their children failing in school due to linguistic disadvantage, many immigrant parents tend to choose model A when deciding the linguistic model for their children.

[15] A complete survey showing this data can be found at: http://www.hezkuntza.ejgv.euskadi.net/r43-573/es/contenidos/informacion/did2/es_2053/adjuntos/ereduen_berrikuntza/prueba_b2_ivei_2005_c.pdf

[16] T. Vicente, "Población inmigrante en los centros educativos vascos. Valoración del personal docente", in R. Santibanez and C. Maiztegui (eds.) Inmigración: miradas y reflejos (University of Deusto, Bilbao, 2007), 129; Almost two third of the foreign students in the Basque educational system come from Latin-American countries, whereas 17% are from Europe (mainly Romania), 15% are from Africa (mainly Morocco), and 10% are from Asia and the Pacific (BASQUE GOVERNMENT (2007): *Second Basque Plan on Immigration (2007-2009)*, Vitoria, p. 23).

Table 1: *Distribution in percentages of immigrant and native students by provinces and linguistic models. Academic year 2006-07.*

		Alava		Biscay		Gipuskoa		Basque Autonomous Community	
Model		Native	*Imm.*	Native	*Imm.*	Native	*Imm.*	Native	*Immigrant*
A		38.5	*61.9*	32.3	*51.9*	14.5	*17.2*	27.3	*45.4*
B		29.9	*27.2*	20.8	*23.2*	18.9	*39.4*	21.5	*27.8*
D		31.6	*10.9*	45.8	*24.9*	66.5	*43.4*	50.6	*26.8*
Total[17]		100	*100*	100	*100*	100	*100*	100	*100*

Source: Department of Education, Universities and Research; Basque Government

Thus, many immigrants in the Basque country are following the same pattern of Roma communities and send their children to model A.[18] As stated before, this does not ensure those children will be able to express themselves, or even understand the Basque language when they become adults. All this can be a factor of deficient integration in the future, when most of the native Basque population will have at least a minimum knowledge of the native language due to the educational system. In some cases, this attitude of immigrant families has indirect social consequences. For example, the A model predominant schools have already become those in which Roma or immigrants form the majority of the student body. This factor has pushed some native families to enrol their children in linguistic models B or D, not so much because of the language reasons, but to avoid sharing the spaces that are now overwhelmingly used by newcomers and Roma students.[19]

This is why the Basque government is making an effort to attract immigrant parents to choose models B and D for their children.[20] The interest is to facilitate their social and cultural integration in the distinctiveness of the Basque society, but there is also the pragmatic interest of facilitating the management of the immigrant influx to the educational system. Many problems arise when dealing with a high degree of mobility and misadaptation of the recently arrived

[17] Immigrant students constitute 5,2% of the total students: 16% of the students in model A; 6% in model B and only 2% in model D.

[18] Roma communities suffer in the Basque Country from the same levels of social exclusion and low prestige as in many other parts in Europe.

[19] In the city of Vitoria-Gasteiz, four public schools host more than 70% of immigrant students, one of them located in the old part of the city. However, most of the native residents of the old town (around 80% of the population there) send their children to schools in other places of the city. This occurs even when the public school of the old town is shifting from A to D linguistic model. *Vid.* BARQUIN, Amelia, "Inmigrantes y escuela vasca", *EL Correo*, Bilbao, 24 September 2006.

[20] See Special Programme for the Insertion of the Immigrant students, at http://www.hezkuntza.ejgv.euskadi.net/r43-573/es/contenidos/informacion/dif8/es_2083/f8_c.html

children. Besides that, if immigrant children tend to concentrate in particular educational areas (e.g. a given linguistic model), the educational system, far from facilitating integration, would be encouraging in the future social division between newcomers and the native population. At the same time, if the native ideal of recuperating a minority language is thwarted, the arrival of Spanish speaking immigrants unwilling to participate bilingually in the Basque society could very easily constitute an argument for political reaction against immigration. However, it must be pointed out that as of yet, no political discourse has developed in this sense.[21]

Table 2: *Evolution on the number of immigrant students in non-university education and distribution among the linguistic models (2002-2007)*

		2002-03		2003-04		2004-05		2005-06		2006-07	
Model		No.	*%*	No.	*%*	No.	*%*	No.	*%*	No.	*%*
A		3,447	*57.9*	4,673	*54.2*	5,942	*51.6*	6,859	*49.4*	7,788	*45.4*
B		1,467	*24.6*	2,364	*27.4*	3,178	*27.6*	3,827	*27.6*	4,774	*27.8*
D		1,041	*17.5*	1,590	*18.4*	2,395	*20.8*	3,189	*23.0*	4,603	*26.8*
Total		5,955	*100*	8,627	*100*	11,515	*100*	13,875	*100*	17,165	*100*

Source: Department of Education, Universities and Research; Basque Government

Apart from the very important issue of the relation of new immigrants to the local minority language, very little has been done to democratically manage new linguistic diversity induced by immigration. In the case of the Basque Country, the First Basque Plan for Immigration (hereinafter "the Plan") was an extremely progressive document. Through it, Basque institutions committed themselves to consider all immigrants residing in the Basque Country (regardless of their legal situation according to the Spanish Aliens Act) as new Basque residents. This included all social benefits obtained by nationals. Even more, there is explicit recognition and adoption of the principle of inclusive citizenship in the Plan. This progressive approach can be considered on the one hand as a veritable effort to integrate the new diversity into the 'national construction' of the Basque Country, and by recognizing all kinds of civil, political and social rights for immigrants. On the other hand, it can also be seen as a reaction against the restrictive policy of the central government, especially during the eight years when the right-wing Popular Party was in office. Recently, in 2007 a Second Basque Plan on Immigration, based on the same principles of the first one, has been launched.

[21] See different surveys at www.ikuspegia.org

Despite this very positive attitude towards the integration of newcomers, there has been very little effort to recognize and integrate the ethnic minorities' languages in the public space.[22] However, at this point there has been almost no demand in this respect from the new communities. Thus, the policy that is being developed in the Basque country, although progressive in social terms in comparison with that of the central and other regional institutions, lacks a serious reflection on the cultural and linguistic diversity from a multicultural perspective.

This situation recalls the Canadian model of diversity, wherein multiculturalism is recognized, even at the constitutional level, but within a framework of bilingualism. This means that the term 'culture' is deprived of its linguistic element[23]. Apart from private enhancement of linguistic development among communities, the polity has adopted a formal preference for two particular languages which are to dominate the public sphere, leaving very little space, if any, for the real enhancement of the remaining languages. This Canadian model seems to be the practical reference that is currently developing in bilingual regions of Spain, including the Basque Country. In the case of Canada, constitutional arrangements in favour of traditional minorities are considered more important than the multicultural heritage of the recently arrived population. The Supreme Court has adopted many decisions in this respect concerning languages, stating that the multicultural clause of Section 27 of the Canadian Charter of Rights and Freedoms is not supposed to promote other languages to the level of French and English. This reasoning is followed in cases like *Mahe*[24], *Solski*[25], *Gosselin*[26], *Public Schools Act*[27] and *Charlebois*[28].

The same attitude towards new minorities is expressed in another well-known conflict dealing with public support in denominational schools in Ontario. This refers especially to the case of Catholic schools receiving public support in this province according to a constitutional provision adopted in 1867. In the late decades of the twentieth century other minorities tried to get the same level of protection in a proportional relation. However, the Canadian tribunals, including the Supreme Court, denied this possibility, giving a superior importance to the constitutional provision of 1867 over the social reality of today's Canada.[29] The UN Human

[22] It is true also that the most common language of these immigrant students is Spanish, but still almost 40% of them have a different language as their mother tongue.
[23] J. Bickerton and A.-G. Gagnon (eds.) *Canadian Politics*, 3rd ed. (Broadview Press, Peterborough, 1999), 466.
[24] *Mahe v. Alberta*, (1990) 1, S.C.R. 342, p. 369.
[25] *Solski (Tutor of) v. Quebec (Attorney General)*, (2005) 1, S.C.R. 201, p. 20.
[26] *Gosselin* (Tutor of) v. Quebec (Attorney General), (2005) 1, S.C.R. 238, p. 21.
[27] Reference Re Public Schools Act (Man.), s. 79(3), (4) and (7), (1993) 1, S.C.R. 839, p. 857.
[28] *Charlebois v. St. John (City)*, (2005) 3, S.C.R. 563, p. 35.
[29] *Adler v. Ontario*, (1996) 3, S.C.R. 609, p. 59.

Rights Committee refused this interpretation in the Waldman v. Canada case.[30] For the UN Committee, the position of Canada was contrary to the non-discrimination clause of the International Covenant on Civil and Political Rights (ICCPR). Once the state adopts measures to promote a specific minority, it is obliged to extend the same measures to other minorities in the same objective situation.

This alternative interpretation of the UN Committee can also be applied to the linguistic reality of each country and it is useful to make constitutional arrangements more flexible in multicultural societies. The Basque Country is presently following a kind of Canadian model in terms of the linguistic integration of immigrants. This entails linguistic assimilation of newcomers into one or two of the official languages. In this framework the importance of the presence of immigrants' languages in the public space is left unconsidered. Therefore, a deep reflection on the new responses to increasing linguistic diversity is needed, not only in monolingual countries, but also in bilingual societies where linguistic conflicts have been present for a long time.

4. A multicultural approach to linguistic diversity

Both Spain and Canada show traditional linguistic minorities holding considerable power within certain regions of the state, such as French in Canada, and Catalan, Basque and Galician in Spain. Both countries also have much weaker traditional minority languages that do not possess any kind of official status. This would be the case of many Indian and Inuit languages in Canada, whereas in Spain it would apply to Berberic, Arabic, Asturian or Aragonese. Finally, both countries have increasing numbers of speakers of other languages due to immigration. In Canada, this also applies to the European languages of the first immigrants (including Scottish Gaelic, Welsh, German and so forth) whose languages may have been present in Canada at the same time as English or French.

In terms of diversity accommodation, Spain has developed a system of territorial autonomies. Within these autonomies, traditional minority languages can be promoted only to limited official recognition. Unlike in Italy, Sweden or Russia, nothing is foreseen on the constitutional level in respect to linguistic minorities or, more generally, minority rights. Therefore, assumption of linguistic rights of minority speakers derives only from the official status of those languages. For the rest, Spanish remains the official language of the state. In Canada, however, both French and English hold official status at the federal level. The constitution also includes some specific provisions in favour of French and English linguistic minorities across the different provinces of the country. There is a formal recognition of the rights of people

[30] Case *Waldman v. Canada* (communication no. 694/1996), decision adopted on 3 November 1999,

belonging to First Nations as well. Other languages or linguistic minority rights are not expressly mentioned in the Canadian constitution.

However, the Canadian constitution includes the relevant Section 27 of the Charter of Rights and Freedoms, known as the multicultural clause. According to this section, all rights and freedoms recognized in the Charter must be interpreted in a manner consistent with the protection and enhancement of the multicultural heritage of Canada. Several questions can be formulated around this section. The main one is if it makes a substantial difference in the Canadian approach to linguistic diversity, in comparison with the Spanish model. In other words, is formal recognition of the multicultural reality necessary to protect new diversity? Is it necessary to include specific minority rights in favour of immigrant groups? Or, on the contrary, is it possible to build a multicultural human rights framework without amending those constitutions (as the Spanish one) not including references to multiculturalism or new diversity?

In order to think of the most suitable model to protect and enhance linguistic plurality in post-modern constitutional systems, let us first analyse the existing legal framework at the international level and how it could be useful to us in this respect. In fact, there are not many documents referring to linguistic aspects of human rights. At the universal level, the 1992 UN General Assembly Declaration on the rights of the individuals who are not natives of the country in which they live, recognizes in its Article 5 the right "to preserve their own language, culture and traditions."[31] Concerning international treaties, the Convention on the protection of the rights of all Migrant Workers and their families scarcely incorporates linguistic or cultural references.[32] Besides the right to education, Article 31 establishes the obligation of the states to ensure that the cultural identity of the migratory workers and of their families is to be respected. However, this convention has not been ratified by any of the main countries of immigration.

An important clause in this field is Article 27 of the ICCPR that establishes the right of persons belonging to linguistic minorities to use their own language. Though this article alludes to linguistic minorities, the UN Human Rights Committee has established that foreigners can benefit from the rights recognized in this article.[33] This being the case, and given that no definition of linguistic minority exists in international law, in the practice that any linguistic group might invoke their minority condition and consequent right to use their own language in a certain state. This solution would dissolve substantial differences between the protection of

CCPR/C/67/D/694/1996, p. 10.4.
31 Adopted by the General Assembly in its resolution 40/144, December 13, 1985.
32 Adopted by the General Assembly in its resolution 45/158, December 18, 1990.

traditional and young linguistic minorities, opening an exciting and almost revolutionary scenario for the regulation of linguistic diversity in democratic states. Article 30 of the Convention on the Rights of the Child (CRC) follows the same pattern as Article 27 of the ICCPR.[34]

At the European regional level, the ECRML expressly excludes from its area of application "languages of immigrants". As for the Framework Convention for the Protection of National Minorities (FCNM), most of the parties in this treaty do not consider the convention applicable to immigrant communities, although the Advisory Committee of the Convention is opening this possibility in relation to some specific clauses.[35] Finally, the European Convention on the Legal Status of Migrant Workers (ECLSMW) only alludes to linguistic questions in Articles 14 and 15, referring to teaching of the mother language as a tool to facilitate the return to the country of origin.[36]

To put it in a nutshell, on the European level, the legal instruments tend to exclude immigrants from the consideration as minorities and, therefore, from the protection of some specific rights recognized of the latter. In contrast, the UN Human Rights Committee has extended the benefits of Article 27 of the ICCPR to communities of immigrants or non-nationals. What in fact is relevant here is to analyse, firstly, if communities of non-citizens should be considered minorities in order to get some protection and, secondly, whether effective protection of minorities implies the recognition of specific human rights for them or can be achieved through general (non-specific) human rights.

In fact, the legal and moral foundation of providing a different treatment to traditional or young linguistic minorities within a multicultural society is weak. If traditional linguistic groups deserve protective legal status and positive measures from public institutions to guarantee the maintenance and development of their respective languages, it is not less true that the new linguistic communities that are developing in the European countries might equally claim protective action on the part of the states in which they reside and to whose well-being they

33 United Nations Human Rights Committee, General Commentary number 23 (50), on article 27 of the International Covenant on Civil and Political Rights, April 6, 1994 (CCPR/C/21/Rev. 1/Add. 5), p. 5.2 and 5.3.
34 Adopted by the General Assembly in its resolution 44/25, November 20, 1989.
35 For instance, opinions on: Romania (2002), ACFC/INF/OP/I(2002)001, p. 17; Czech Republic (2002), ACFC/INF/OP/I(2002)002, p. 23; Croatia (2002), ACFC/INF/OP/I(2002)003, p. 19; Germany (2002), ACFC/INF/OP/I(2002)008, p. 18; Armenia (2003), ACFC/INF/OP/I(2003)001, p. 21; Norway (2003), ACFC/INF/OP/I(2003)003, p. 20.
36 Agreement number 93 of the Council of Europe, dated 24 November 1977.

contribute[37]. The legitimacy of such a claim cannot be questioned by historic or numerical reasons, at least in a long term perspective. In many cases there will be a significant difference between situations depending on the existence of a traditional territory where the language has been used for a long time. In respect to the number of speakers, several new linguistic communities can easily overtake other traditional communities in several countries of the continent.

Therefore, in both theoretical and practical terms, we must shift some traditional approaches to a new consideration of the linguistic diversity of the European societies. This also entails adaptation of the legal framework to the sociolinguistic reality of each country. In principle, the protective positive measures that benefit some traditional languages should be extended in favour of other linguistic groups living in the country on a permanent basis. This implementation should be, of course, modulated by principles of rationality and proportionality. Denying any recognition of existing languages in a multicultural society should not be considered compatible with a democratic approach to diversity.

Arriving at the issue of general or specific rights, there are already moral and legal foundations to defend general human rights as a more suitable tool for protecting the rights of people belonging to minorities. In fact, most of the rights that are usually considered as specifically for minorities can be understood as faculties that derive directly from the content of generally recognized rights. For example, it is not possible to deny a member of a linguistic minority the right to unfold visible information to the public in his or her minority language without violating freedom of speech.[38] In the same way, other legitimated interests of the members of linguistic minorities derive in fact from generally recognized civil and political rights. For example, freedom of association, freedom of assembly, right to private and family life, and the right to education.[39] All these rights, according to the international instruments in force, are subject to specific limitations. The exercise (not the entitlement) of these rights can also be modulated to the concurrence of certain objective circumstances as, for example, a minimum number of people demanding the use of the right (e.g. speakers of a particular language) or a given degree of territorial concentration of the interested people. What is relevant here is that these modulations should be equally applied to the members of all minorities. This means that the

[37] S. May, "Misconceiving Minority Language Rights: Implications for Liberal Political Theory", in W. Kymlicka and A. Patten (eds.) *Language Rights and Political Theory*, 133.
[38] United Nations Human Rights Committee, case *Ballantyne, Davidson and McIntyre v. Canada* (communications 359/1989 and 385/1989), 31 March 1993, CCPR/C/47/D/359/1989.
[39] M.J. Larios Paterna, "El derecho a la educación de los inmigrantes", in E. Aja and J. Arango (eds.) *Veinte años de inmigración en España*, 269; European Court of Human Rights, case *Cyprus v. Turkey*, Appl. 25781/94, Judgment of 10 May 2001, paragraphs 275-280.

aforementioned rights are not specific titles for minority members, but the real implementation of generally recognized rights.

Within this perspective, states would not be entitled to impose an identitarian understanding of the human rights. On the contrary, all persons, irrespective of their nationality, must be entitled to exercise their human rights in their own language[40]. To achieve that, states are responsible to arbitrate the most reasonable measures by virtue of the sociolinguistic situation, taking account of such objective circumstances as the number of speakers of the different communities, their territorial distribution within the country, their ability to create cultural infrastructure and also the traditional or historical ties of those communities with the country. Thus, states would not be free to declare one particular language as official, excluding the rest from the public space, because they would be obliged to respect, protect and promote the diversity as it is present within their respective societies.

If society is multicultural, a democratic state is obliged to give an institutional answer to this reality. In linguistic terms this implies the need of recognizing linguistic diversity and formulating the exercise of general rights through the different languages current in the society, according to reasonable and proportional standards. These standards would be provided by a permanent analysis of the social reality and not conditioned by decisions made at the institutional level or fixed in a constitutional framework drafted a long time ago. In today's world multiculturalism implies to reconsider constitutional law, making the public space more flexible and creating proceedings to adapt it on a permanent basis to the existing identities in a complex society. Thus, previously adopted constitutional arrangements keep their validity but must not constitute barriers for the rest of minorities that make up today's respective societies. As the UN Human Rights Committee has stated in the case, Waldman v. Canada, the non-discrimination approach entails the extension of the same measures to other minorities in the same situation, only to be modulated by objective criteria such as a minimum number of members, or territorial concentration of their members. This solution can also be applied to linguistic minorities. In this sense, the state would be obliged to provide more and more services including education[41] in minority languages when these minority communities appear and develop within that society.

[40] E.J. Ruiz, Minorías, inmigración y democracia en Europa. Una lectura multicultural de los derechos humanos (Tirant lo blanch, Valencia, 2006), 498-506.
[41] C. Jones and R. Warner, "Language and Education", in *Education Rights and Minorities* (Minority Rights Group International, London, 1994), 19.

5. Conclusion

The previous arguments bring us to the conclusion that the formal incorporation of a specific multicultural clause is not necessary from a legal point of view. In fact, what is relevant is to shift the way of interpreting the rights and freedoms recognized in general by the constitutional system, since a specific multicultural clause does not by itself incorporate any substantial content. This can be shown with the Canadian experience and by analysing the case law developed by the Supreme Court in respect to the aforementioned Section 27[42]. The presence of such an interpretative clause in the Constitution has of course an important symbolic value and is a guide for interpreting the rights. However, regardless of the presence of such an article, a democratic understanding of the multicultural reality of today's contemporary societies means that all rights and freedoms must be interpreted in conformity with this multicultural heritage, which is being reinforced by the recent immigration flows. From there, it is the role of the courts to develop a correct understanding of the adaptation of the constitutionally recognized rights of the plural identity of all the citizens.

This also means that those minority languages present in the Basque or Spanish public space, as a result of recent process of immigration, should be given a minimum standard of recognition. Public administrations would become obliged to protect and respect this linguistically diverse heritage by providing more services in these languages, taking account of the new sociolinguistic situation, according to reasonable and proportional criteria. One of the most problematic issues here is how to balance this new approach to linguistic diversity with the state protection deserved by native minority languages. In the bilingual autonomous communities there is a public interest of promoting the normalization process of the respective native language. It is also true that these languages have no other political space where they can maintain a favourable environment, unlike most of the immigrant languages that today share the public domain. In fact, this very factor would be one of the factual circumstances that public institutions should bear in mind when adopting measures in a diverse society. In this respect, protecting and promoting the conservation and enhancement of languages of new communities of residents does not mean to abandon the active role of the public institutions in favour of those native minority languages that deserve a qualified protection.

In the case of the Basque Country, this implies at least to review the traditional linguistic models of the educational system. Firstly, it is necessary to reinforce the acquisition of the Basque language for all students not included in D model. Secondly, it would be necessary to

[42] E.J. Ruiz Vieytez, "Constitución y multiculturalismo. Una valoración del artículo 27 de la Carta Canadiense de Derechos y Libertades", 80 *Revista Española de Derecho Constitucional* (2007), 169-197.

provide as much parallel instruction in immigrant languages as is reasonable and possible (at least for the basic levels of education). Thirdly, this must be done partially integrating this parallel instruction with students in models D and B, avoiding physical separation in different schools. Finally, distribution of students following different linguistic models should not correspond to social class differences. The access of children to public and private schools should be reconsidered in order to avoid social segregation as well.

It is necessary to find a balance in the protection given by the polity to traditional minority languages and those minority languages resulting from recent immigration. The latter can also constitute minority languages in the states of origin, but will normally have a geographic (and demographic) reference in the country of origin. Nevertheless, defining territorial references for different languages will also have to be reconsidered sooner or later in the construction and evolution of multicultural policies.

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