The Spanish Constitution and the new Statutes of Autonomy. Changes in the scope of the linguistic official status[1]

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I. THE CONSTITUTIONAL FRAMEWORK OF LINGUISTIC OFFICIALITY.

I.1. The Constitution of 1978: transferral to the Statutes of Autonomy of the declaration of other official languages.

The passing in 1978 of the Spanish Constitution opened the path for the recognition in Spain of those languages different from Spanish. However, the constitutional acknowledgement of the possibility of establishing other official languages apart from Spanish is undermined by a calculated ambiguity which, like in so many other aspects, leaves for later interpretation the scope, content and limits of the linguistic rights and duties. Now, thirty years after it was passed, the Constitution is a frame sufficiently wide and vague to allow an interpretation much closer to an equality of the different languages of Spain, which should favour their normalisation.

The recent passing of the new Statute of Autonomy of Catalonia, together with the ratification by Spain of the European Charter of Regional or Minority Languages, should be taken into consideration for the interpretation of the constitutional framework of linguistic rights and duties in the territories which have an autochthonous language.

The Spanish Constitution, as it is well known, establishes in its Preliminary Title, Section 3 the constitutional character of the languages of Spain. It establishes that:

1. Spanish is the official language of the State. All the Spaniards have the duty to know it and the right to use it.
2. The other languages of Spain will also be official in their respective Autonomous Communities according to their statutes.
3. The wealth of the different linguistic modalities of Spain is a cultural heritage that will deserve special respect and protection.

The reading of this section and its important place in the Constitution lets us draw some conclusions[2]. First of all, a difference is made between languages and linguistic modalities.

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Whereas the former are considered official, the latter will only deserve special respect and protection[3]. Therefore, the official status of a language involves more than a simple duty of respect and support. It implies a superior position which, however, is not defined by the Constitution or which its interpreters have not wanted to see so far in this section.

In the second place, it is necessary to ascertain that the constitutional precept does not enumerate the official languages apart from Spanish. It seems that, in accordance with the dispositive principle present in other parts of the Constitution, the later concretion of that official status will complete this section[4] letting us know which languages are considered official and, especially, what the implications of that status are in terms of linguistic rights and duties. However, this ambiguity of the Constitution is partly contradicted, since section 3.2 literally says that the other languages will also be official. There is, therefore, a precept or an implicit declaration of those languages as official which the Statutes of Autonomy could not ignore. The function of the statutes would rather be to determine the content and the scope of this status in terms of linguistic rights and duties. LOPEZ BASAGUREN indicates that the declaration of the other official languages has a preceptive and inescapable character which consequently dismisses the possibility that it might be subject to the decision of the legislators of the statute[5]. The responsibility of the Statutes would just be to specify the effects of co-official status.

Thirdly, it fixes an incomplete principle of territoriality for those official languages different from Spanish. The linguistic rights that the declaration of an official language might generate are limited to the autonomous territory and those rights will not follow their holders outside that territory. Meanwhile, this territoriality has limitations, since they are not declared the only official languages in their territory[6]. This territoriality also affects the public administrations, so that the peripheral organs of the central and the local authorities situated in a

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[2] For an in-detail study of the constitutional regulation of multilingualism *vid.* FERREIRA, NOGUEIRA, TATO, VILLARES, *Estatuto xurídico da lingua galega*, Ed.Xerais, 2005; PÉREZ FERNÁNDEZ.J.M. (coord..), *Estudios sobre el estatuto jurídico de las lenguas en España*, Atelier, 2006.

[3] LÓPEZ BASAGUREN, A., "El pluralismo lingüístico en el Estado Autonómico", *Autonomies*, nº9, p.59-60, indicates that, since linguistic modalities may be excluded from protection and recognition by the Statutes of Autonomy, it should be considered that the development of the constitutionally established protection constitutes a matter shared between the State and the Autonomous Communities.

[4] BAÑO LEÓN,J. M.,"El ejercicio del pluralismo lingüístico en la Administración Pública", *Revista Española de Derecho Administrativo*, nº54/1987, mentions that this referral to the statutes implies the respect to the will of the autonomous representative organs, but it is also a referral to a regulation of state character, since the statutes are organic laws. For that reason they are binding not just on the autonomous organs, but also on the ones of the state.

[5] LÓPEZ BASAGUREN, A., "El pluralismo lingüístico en el Estado Autonómico", *Autonomies,* nº9,p.48. the Supreme Court coincides in its Ruling of April 25th 1984 with this consideration, indicating that these languages will be official without needing to wait for the respective statutes.

[6]NINYOLES, R., "La política lingüística: modelos y ámbitos" en *Las lenguas nacionales en la Administración,* Deputación provincial de Valencia,1981, indicates that, in fact, there is a mixed model because it is neither exactly territorial, since it excludes the priority of the autochthonous language, nor personal, since it does not allow other languages apart form Spanish to extend the exercise of their linguistic rights outside their territory.

territory with an autochthonous language will be subjected to what the autonomous legislation establishes with respect to that language[7].

In the fourth and final place, a specification with respect to Spanish is introduced establishing that all the citizens have the duty to know it and the right to use it. That is an element not present in connection with the other official languages. We will soon discuss whether this specification is a consequence of its official status or a supplementary provision.

There is just one more aspect that can be inferred from the Constitution about the protection of the various languages. The inclusion of this section in the Preliminary Title contributes to enhancing it and to showing that the respect to the different languages should be one of the definitory elements of the Spanish constitutional framework (it should be taken into account that this declaration is next to those about the model of state and the symbols). However, this position is also an obstacle for the linguistic rights to be protected by the appeal for legal protection before the Constitutional Court, since it is situated right before the provisions relative to the fundamental rights which receive that protection.

The declaration with respect to the languages included in the Constitution has to be interpreted according to the regulations introduced by the statutes of the Autonomous Communities with an autochthonous language in their function as members of the 'block of constitutionality'.

I.2. The Statutes of Autonomy as part of the block of constitutionality. The new scope for the linguistic rights provided by the new Statute of Catalonia of 2006.

The Statutes of Autonomy passed in six Autonomous Communities immediately after the Constitution declared their autochthonous languages official, although two of them (Navarre and Valencia) limited that status to certain parts of their territory. The Statutes of Autonomy determined the scope of this official character, which was defined through ordinary laws (laws for the normalisation or use of the language). Some statutes declared the right to know the co-official language, and even a right to use it. The first statute of Catalonia showed a will to reach equality in the rights and duties which makes it possible to deduce the existence of some duties parallel to the undisputed linguistic rights.

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[7] The Constitutional Court mentioned explicitly this question in rulings 82/1986 and 123/1988, of June 23rd. The latter reminds that the Military are not an exception to this rule of territoriality.

The Statutes of Autonomy complete the framework of constitutionality according to which the constitutionality of the rest of rules of our legal system is judged. With respect to the languages they have kept a certain ambiguity, permitting sometimes opposed constitutional interpretations which have evolved as the society asked for new answers in this field[8]. Apart from establishing the official languages, the constitutional and statutory provisions remain in the domain of principles and good will, without fixing in the slightest the limits and content of the linguistic rights. This is not strange given the character of this kind of text, and it lets later legislation develop the subject in the most appropriate way within the framework of constitutionality. The historical moment in which the statutes were passed at the beginning of the democratic transition explains the conciseness of the linguistic regulations.

Almost thirty years after the passing of the first statutes, there exists plenty of jurisprudence in this matter offering an interpretation about the linguistic rights and duties, but small groups with an intense activity of resistance against the processes of linguistic normalisation survive. Those two reasons have caused the Autonomous Communities with an official language to want to raise its level and to specify the catalogue of rights and duties in relation to its use in the new Statutes of Autonomy passed since 2006.

In this sense, the Statute of Autonomy of Catalonia of 2006 means an advance in the establishment of a definitive regulatory framework in linguistic matters. Three specific aspects constitute novel modifications which try to provide solutions to controversial issues with respect to the legal status of the languages in Spain.

Firstly, the Statute of Catalonia establishes a legal duty to know Catalan which would involve identical consequences to those that the Constitutional Court interprets in the duty to know Spanish in section 3 of the Constitution: its full validity in legal and public relationships.

Secondly, it provides some measures in order to guarantee that the principle of territoriality in the use of the languages has a complete application without exceptions in all the levels of administration (autonomous, local and central) present in the territory of Catalonia.

Finally, it presents the possibility of a 'personal linguistic statute' before the central institutions common to the whole of Spain (Parliament, Constitutional Court, Supreme Court). This statute would allow the citizens of Catalonia to have dealings in writing with those institutions in Catalan 'according to the procedure established by the relevant legislation'.

These three aspects introduced by the new Catalan statute present three legal and political debates which will have to be solved by the Constitutional Court, since they have been appealed

[8] The recent ruling of the Constitutional Court 247/2007 in connection with the statute of Valencia says: "The integration of the statutes in the block of constitutionality, its resulting consideration as a parameter for judging the legal regulations and, particularly, the function that the statutes develop and their especial inflexibility, give them a peculiar resistance before the other laws of the state which makes it impossible for them to be formally reformed by those laws.

to that court[9]. However, the existing constitutional jurisprudence (both about languages and about the distribution of competences) and an analysis of the scope of competences corresponding to each territorial level, would advance an interpretation favourable to the constitutionality of the provisions included in the Statute of Catalonia of 2006.

This paper will offer an analysis of the constitutionality of the provisions relating to the duty to know both official languages when it is included in the statutes. It will also analyse the full territorial effects that the competence to legislate about languages has on the administrations offering their services in a territory with an autochthonous language (without precluding that these administrations may establish themselves the organisational measures necessary to implement the approved linguistic regulation).

II: THE DUTY TO KNOW THE OFFICIAL LANGUAGES: IS THIS ONLY APPLICABLE TO SPANISH OR CAN THE STATUTES APPLY IT TO THE OTHER LANGUAGES?

The Constitution in its schematic declaration of principles in relation to the protection of the different languages declares a duty to know Spanish which is not extended to the other official languages. This explicit mention of Spanish was used by the Constitutional Court (supported by most legal doctrine) as the basis to build the legal status of the other languages, considering the exclusion of a duty similar to that which protects Spanish. In short, the Constitutional Court considers that there is just a duty to know Spanish, since the Constitution does not acknowledge any other duty in relation to the other languages. According to the Court the declaration of another official language does not entail such a duty, only the possibility that this language may become the normal means of communication with the public authorities[10]. Therefore, the official status of a language generates simply juridical and public duties (for the authorities of the territory in which this language is official), rather than private duties for the citizens. That is, that status does not result in the duty to know Spanish, the duty is a bonus in the

[9] Seven appeals of unconstitutionality have been lodged against the Statute of Catalonia. In particular, the appeal by the members of the Popular Party challenges the constitutionality of the sections that establish the status of the official languages in Catalonia.

[10] The Constitutional Court in Ruling 84/1986 of June 26th about the Law of Linguistic Normalisation of Galicia said: "Now, such a duty is not imposed by the Constitution and is not inherent to the official status of the Galician language. Section 3.1 of the Constitution establishes a general duty to know Spanish as the official language of the State. Such a duty agrees with other constitutional provisions that recognise the existence of a language common to all Spaniards, whose knowledge can be assumed in all cases independently of factors of residence. However, the same thing does not happen with the other official languages of Spain in their respective Autonomous Communities, since the aforementioned section does not establish the same duty for them. That cannot be considered discriminatory either, since the conditions which put into effect the duty to know Spanish mentioned above are not applicable to the co-official languages".

constitutional regulation of Spanish which differentiates it clearly from the other languages spoken in Spain.

MILLIAN I MASSANA considers that three consequences are derived from the official status of a language: its adoption as the language of the dealings of the citizens with the public authorities (and therefore its full legal validity); its compulsory study in the educational system; and the impossibility to allege ignorance or using a different language before the authorities[11]. The latest consequence, although it does not imply a duty to know it, would amplify the status that the Constitutional Court gave to the languages different from Spanish, and it would be more consequent with the general interpretation of the scope of public interventions in a private sphere. So, nobody would have the duty to know a language because it is official, but its ignorance could not be alleged validly in the juridical and public field, i.e. in the dealings with the authorities. The private sphere of rights would remain intact, but the official status of the language would affect the rights of private individuals in their juridical and public dealings.

II.1. Legal status of the Statutes of Autonomy

An element that has to be taken into account in order to analyse whether the Statutes of Autonomy can establish a regulation of their official languages equivalent to the one that the Constitution formulates in respect to Spanish in section 3, especially in respect to the duty to know it, is their status within our legal system.

The Statutes are organic laws, i.e. central laws passed by the Spanish Parliament through a procedure which requires a qualified majority for their passing. Nevertheless, they are peculiar organic laws because the process of their elaboration integrates a double will (the one of the Autonomous Community and the one of the central government), since both the autonomous and the central bodies of parliamentary representation participate consecutively in the drafting of the statutory text[12]. What is more, the ratification through a referendum by the citizens envisaged by some statutes means a strengthening of their popular legitimisation.

The Statutes are also integral part of the block of constitutionality which, as such, serves as a parameter of constitutionality of the rest of the legal system.

[11] MILIAN I MASSANA, "La regulación constitucional del multilingüismo", *Revista española de Derecho Constitucional*, año 4, nº10, 1984*,* pp.131-134.

[12] The Constitutional Court says in its recent Ruling 247/2007 of December 12th about the Statute of Valencia (FJ 6): “The Statutes of Autonomy have three main characteristics. First of all, the necessary confluence of different wills in their process of elaboration, a trait that is clearer in the subsequent reforms of a Statute than in its initial passing, since the Constitution puts an end to a politically centralised state in which there were no autonomous legislative assemblies in a real sense”.

In this context, the analysis of the constitutionality of provisions establishing measures of linguistic regulation in possible conflict with current central regulations, such as those introduced by the Statute of Catalonia (e.g. the knowledge of Catalan by the judges who practice in the territory of Catalonia), cannot be made by reference to what the ordinary legislation says, but rather within the framework of the Constitution. That is, the constitutionality of the provisions of the Statute of Catalonia does not depend on whether they contradict current regulations (whose integration in the block of constitutionality is dubious), but on whether they contradict section 3 of the Spanish Constitution[13]. As the Constitutional Court established in its ruling 99/1986 of July 11th: "The only parameter to judge the constitutional validity of a disposition included in a Statute of Autonomy is the Constitution itself; i.e. the constitutionality of a statutory provision can only be judged on terms of its conformity with the Constitution".

Similarly, Ruling of the Constitutional Court 247/2007 states that "The Statutes of Autonomy, in their concrete position, subordinate to the Constitution, complement it, and that can even mean significantly that they are integrated in the parameter of appreciation of the constitutionality of the laws, regulations or decrees with the force of a law, both of the central government and of the autonomous governments (section 28.1 LOTC [Organic Law of the Constitutional Court]), so that they are part of what we have called 'block of constitutionality'" (rulings of the Constitutional Court 66/1985 of May 23rd, FJ 1; 11/1986 of January 28th, FJ 5; 214/1989 of December 21st FJ 5).

It is evident that, if there is a contradiction between the articles of a Statute of Autonomy which has been passed and some regulation of the legal system, these contradictions must be solved through the application of the principles of competence and hierarchy of the regulations. BARCELÓ I SERRAMALERA defends that the recognition of the linguistic rights and duties in a Statute of Autonomy provides them with a status in the legal system "of clear functional superiority with respect to other regulations, and it also has, necessarily, consequences in the case of collision". She adds that "the respect of these rights will act as a material condition of validity of the regulations of the Autonomous Communities and of the central government that refer to the linguistic areas of their respective competence"[14].

Thus, the intervention of the Spanish Parliament in the process of passing the statutes allows a preliminary test of the integration and safeguard of the central competences in the statutory texts[15].

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[13] About the concept of 'constitutional block' and its diffuse limits vid. RUBIO LLORENTE, F., "El bloque de constitucionalidad", *Revista Española de Derecho Constitucional,* nº27/1989.

[14] BARCELÓ i SERRAMALERA, M., "Els drets lingüístics como a drets públics estatutaris", Revista Llengua i Dret, nº 47/2007, p.281-282.

[15] In fact, the Spanish Parliament deleted from the new Statute of Catalonia a specific jurisdictional appeal before the Superior Court of Justice of Catalonia because they understood that establishing appeals was a state competence.

Moreover, ultimately the Constitutional Court is placed as a final guarantor of the constitutionality of the statutory provisions in case this process of integration of central and autonomous wills was questioned by an appeal of constitutionality. As Ruling of the Constitutional Court 247/2007 has indicated: “Apart from that, in the existing system of relationships between the Statutes of Autonomy and the organic laws that are required by the Constitution, the confrontation of the statutes with the organic laws due to the typical inflexibility of the former is not to be ignored. Their procedure of reform, which cannot be carried out through their simple passing by the Parliament, determines the higher resistance of the statutes over the organic laws, so that the latter (except for those that reform a previous law according to section 147.3 of the Spanish Constitution) cannot modify the statutes formally. In any case, according to what was indicated previously, the relationships between the Statutes of Autonomy and the organic laws required by the Constitution, are subject to what the Constitution stipulates on the matter. That is why the material reservation that the Constitution makes in favour of certain organic laws (in specific terms for each case) means that each of those laws can carry out a delimitation of their own scope (Ruling of the Constitutional Court 154/2005 of June 9th, FJ 4 and 5, with references to other rulings), and the effectiveness of the statutory rules depends on that delimitation. So, in case of collision it will be the competence of this Court to appreciate the scope of that reservation and its effects over the validity or effectiveness of the statutory rules”.

It seems, therefore, that, if the central legislator considers that the principles of the statute contain a regulation respectful with the central regulatory space which does not invade the material space reserved to central regulations, any central regulations contradictory with those principles will have to be adapted to the new regulatory framework (unless a future appeal before the Constitutional Court could establish a concrete interpretation about the effectiveness of the statutory principles in relation to the central laws).

The Statute of Catalonia explicitly indicates that these linguistic provisions will be set ‘in the manner established by the laws’. These laws will in some cases be central laws (e.g. Justice) which will have to respect the block of constitutionality integrated by the Constitution and the statutes. But those laws will also, in accordance with their legal authority of self-organisation and with their substantive competences, be able to establish the organisational provisions necessary to apply the autonomous linguistic jurisdiction.

II.2. Configuration of the linguistic rights and duties by the autonomous regulations

The Constitution in section 3 refers to a later determination of the other official languages apart from Spanish, which should be carried out by the autonomous authorities within the exercise of their self-government. Just as the Constitution does not establish which the other official languages are, leaving it for the Statutes of Autonomy to determine the official status and the scope of that status, it can also be understood that the linguistic rights and duties that arise from that co-official status will have to be fixed by the authority which has the competence to determine the other official languages[16].

A historical interpretation of the Constitution also shows that an omission by its drafters does not necessarily have to be interpreted as a prohibition. It should rather be seen as a referral to the Autonomous Communities for the configuration of their own linguistic framework, permitting the adaptation of those regulations to the historic and linguistic context of each of region[17].

In fact, although most Autonomous Communities do not establish that duty, they do shape the content and scope of the official languages within their territory in more detail than the Spanish Constitution did. Moreover, in the case of Catalonia the new statute establishes a duty to know Catalan, parallel to that of Spanish, with a text that tries to reflect the constitutional jurisprudence of this period. Thus, it goes beyond the ambiguous wording of the previous statute, which had already indicated the intention of establishing the official status of Catalan as one of the rights and duties for the public authorities and the citizens.

There is a certain contradiction in the constitutional jurisprudence in relation to the scope that the autonomous regulations can have in the shaping of the linguistic framework. The Constitutional Court seems to be admitting that, whereas the framework of linguistic rights and duties of Spanish is explicitly defined in the Constitution, the same is not true about the other official languages. Those languages were conditioned to what the Statutes of Autonomy would stipulate as basic institutional rules of the Autonomous Communities. The declaration of the official languages and the content of that declaration was their competence.

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[16] It could be argued that this debate already took place during the process of drafting the Constitution and that at the time the existence of that duty was voted against, so that this exclusion was in the spirit of the its drafters. However, the passing of the years should allow the progressive accommodation of the spirit of the norm to the present convictions, as long as that new interpretation does not contradict the text. Furthermore, as it is well known, what is binding is the latter consideration, not the spirit of the norm.

[17] It should be taken into account that the historic and linguistic context in which the Constitution was passed was one of profound discrimination and illiteracy of the citizens in the knowledge of their autochthonous languages different from Spanish. So, an explicit declaration of a duty to know those languages was understood as an incoherent measure with little contact with the reality of these languages at the time. AGIRREAZKUENAGA, I., "Reflexiones jurídicas sobre la oficialidad y el deber de conocimiento de las lenguas", *en Estudios sobre la Constitución Española. Homenaje al Prof. Garcia de Enterria*, Civitas, t.II, Madrid, 1991, p.687, mentions this historical context in connection with the declarations of one of the drafters of the Constitution, Jordi Solé Tura, who ratifies that the duty to know Spanish was just an evidence due to the situation of that language in comparison to the 'cultural genocide' that the other languages had suffered.

It is true that the statutes were quite succinct as a consequence of the historical moment, but the Constitutional Court also took in this respect steps which favoured a much less restrictive interpretation than the one finally adopted in connection with the duty to know the languages.

A clear manifestation in this respect is the recognition that the autonomous lawmaker can establish the linguistic framework of the autochthonous language even though the Constitution does not explicitly grant this competence. That recognition means as well that those autonomous regulations take immediate effect in the whole autonomous territory and for all the public administrations, including central and local institutions[18]. If it is admitted that a true competence over the support and normalisation of the autochthonous languages can be drawn from the schematic constitutional declaration about the languages, and that this competence makes it possible to generate a catalogue of rights and duties (e.g. the right to use the language before the public authorities, the duty of its knowledge for the students) not mentioned in the Constitution (precisely because it was considered that it should be left for the autonomous authorities to determine their scope), then it seems difficult to share the reasoning that, on the other hand, these autonomous regulations cannot introduce the duty to know the autochthonous language just because the Constitution does not mention it.

Section 3 of the Constitution is clearly the departing point of the Spanish linguistic regulation rather than a closed list of rights and duties. That results from its literal tenor and that was recognised by the Constitutional Court. Nevertheless, that very interpretation does not prevail when the duty to know the other languages is excluded. The explicit mention in the Constitution of the duty to know Spanish that leads the Constitutional Court to exclude a parallel duty with respect to the other languages should be interpreted in line with the rest of the constitutional jurisprudence on the matter. This jurisprudence is, as we have already said, clear: the linguistic rights and duties have to be determined by the competent authority, the autonomous lawmaker[19]. And the duty of general knowledge of the co-official languages is certainly one of those duties with an autonomous configuration.

Some authors also indicate that the correct interpretation of the constitutional duty to know Spanish is limited to a duty of compulsory learning of this language, but it is not extended to a duty to know considered as the impossibility of alleging ignorance of the language. This interpretation, based on historical analyses and on the constitutional debates themselves, would reduce significantly the inequality between the different official languages and it would be

[18] About this jurisprudence and the question of the distribution of competences *vid.*COBREROS MENDAZONA, E., "La distribución de competencias entre el Estado y las Comunidades Autónomas en materia lingüística", *Autonomies*, nº 12.

[19] It should also be taken into account that this definition of the content of the linguistic freedom, although it would be more correct if it were carried out by the Statutes of Autonomy, can be set by the autonomous lawmaker. In this respect such authors as BAÑO LEÓN y LÓPEZ BASAGUREN, *op. cit.*, coincide.

perfectly compatible with the establishing of similar duties, which in practice do exist, with respect to the co-official languages[20].

II.3. Exceptions to the duty to know Spanish and to the lack of a duty to know the other co-official languages

An interpretation so close to the text of the Constitution is also naive or has an unsystematic perspective of the constitutional principles. Although the Constitution mentions in this and in other sections 'duties' of the citizens, it is difficult to extract from those declarations true legal duties demandable to the citizens and provided with consequences if not fulfilled. It is enough to remember that the Constitution establishes, among others, the 'right and the duty' to work, which neither in its aspect as a right nor in the contrary as a duty conforms a true legal requirement for its potential breachers.

In his study about the idea of the constitutional duty S. VARELA reached the conclusion that the duties declared by the Constitution are mere manifestations of wishes of the lawmaker without any legal effect unless they are developed into laws. Ultimately, those constitutional duties can be interpreted as "a legitimisation of the intervention of the authorities in certain social relationships or in some areas of personal autonomy", but not as provisions generating legal duties for private individuals. In short, those duties represent areas of intervention of the public authorities in the enforcement of superior values of the legal system[21]. In this sense, the legislation in order to guarantee the learning of Spanish in the educational system would be a transposition of that constitutional duty, but, following the same reasoning, there would not be a true legally demandable duty for all the citizens to know Spanish.

Even in relation with the undisputed duty of all Spanish citizens to know Spanish, there are areas in which, in order to guarantee other rights considered superior or preferential, the means are provided so that citizens subject to this duty can communicate in other languages. That is the case of children in their early years of education, for whom schooling exclusively in their mother tongue is allowed. That is also the case of the guarantee of effective defence and of a fair trial, providing systems of translation for Spanish citizens with languages different from

[20] PRIETO DE PEDRO, J., *Lenguas, lenguaje y derecho,* Civitas, Madrid 1991. This author indicates that "between these two senses there are reasons to state that the constitutionally legitimate meaning corresponds mainly to the second [*the one of knowing as a result of a process of learning*]; those reasons are supported, as we are going to see, by a global interpretation of section 3 of the Spanish Constitution under the light of the principle of freedom, but they star to be formed in the parliamentary antecedent of that precept" (p. 42). Moreover, he concludes that "thus interpreted, the locution 'duty to know' is not opposed at all to introducing the autochthonous languages of the Autonomous Communities in the compulsory education" (p.46).

[21] VARELA DIAZ, S., "La idea de deber constitucional", *Revista Española de Derecho Constitucional*, nº 4, año 2, enero-abril 1982.

Spanish. The Constitutional Court itself, in Ruling 74/1987 of May 25th, subtly limits the forcefulness of the duty to know Spanish in this case by saying: "Certainly, the aforementioned duty to know Spanish means an assumption that such knowledge really exists, but that supposition may be distorted when the detainee alleges ignorance or insufficient knowledge plausibly, if this circumstance is manifest during the police procedures". So, there is not an absolute duty, whether temporarily or circumstantially, to know Spanish, since there can be exceptions to guarantee other values and superior rights of our legal system.

Thirdly, the proclaimed lack of existence of a parallel duty to know the other official languages also finds exceptions that contribute to make the apparently straightforward list of linguistic rights and duties vaguer. The Constitutional Court itself, forceful in the declaration that there is no such duty for the other official languages of Spain, has repeatedly been admitting exceptions in connection with certain individuals who hold a specially dependent relationship with the authorities, particularly students in the compulsory levels of education and civil servants. There is no doubt that the completely voluntary character in the configuration of the citizens' linguistic use gives in again before the necessity of preserving other values and rights.

II.4. Gradualness of the duty to know as a time limit to the interpretation of the Constitution: how long does it have to exist?

There is also a final question that opens a gap in the restrictive interpretation derived from the constitutional jurisprudence about linguistic rights. The Constitutional Court has repeatedly mentioned in its decisions that the adaptation to the new constitutional frame of recognition of the languages must be carried out in a progressive manner. So, both the citizens and, especially, the authorities, must take any necessary action to guarantee the linguistic rights, but it is not possible to demand their full application from the very first moment. This reasoning served to limit the possibility of requiring effective measures from the authorities, since they had to make a progressive adaptation that could take a long time. It also helped to protect those public employees and students reluctant to the introduction of a duty to know a new language, allowing the gradual adaptation to the new framework.

However, we believe that the advocated gradualness in connection with the linguistic rights must be accompanied by gradualness in the duties. For instance, it would be logical to assume that those students who have passed through an educational system with two official languages have acquired some linguistic duties that do not disappear once their education is

completed. Therefore, a larger sector of the population will have progressively not only the right to use the autochthonous language, but also the duty to know it[22].

A reflection should also be opened in connection with the life of this "gradualness". It seems difficult to keep escaping the positive action of acknowledging in all spheres the multilingual character of Spain alleging a supposed "gradualness" thirty years after the Constitution was passed. It is not justifiable for the various administrations present in the territories with an autochthonous language (Justice, peripheral organs of the central administration, etc.) to keep excusing themselves in that gradualness after this long time in order to prevent effective measures of normalisation in their fields of performance or in order not to provide effective means that will allow the citizens to put their linguistic rights into practice.

III. EXTENSION OF THE AUTONOMOUS COMPETENCE IN LINGUISTIC MATTERS: THE PRINCIPLE OF TERRITORIALITY AND ITS EFFECTS OVER ADMINISTRATIONS DIFFERENT FORM THE AUTONOMOUS ADMINISTRATION

The long time that has gone by since the passing of the statutes and the linguistic normalisation laws make it possible to see that the efforts to make the official status of the languages effective in the territories with an autochthonous language may have been more or less fruitful in connection with the autonomous administration and its relationships with the citizens. However, similar deficiencies can be observed in all the regions with an autochthonous language concerning the bodies dependent on the central administration (Civil Service, Justice System, Army).

The principle of territoriality which should apparently govern the use of the languages, which would therefore imply that the linguistic regulations take effect over all the administrations present in the territories with an autochthonous language, finds serious obstacles in the bodies and institutions dependent on the central government. Moreover, within them those institutions more closely linked to the manifestations of the sovereignty of Spain (the Justice and the Army) are clearly reluctant to incorporating multilingualism into their activities. The linguistic rights of the citizens give way here to serve the 'institutional impermeability' against the use of other official languages apart from Spanish.

The existing constitutional jurisprudence defends the territoriality of the official languages, extensible to all the administrations acting in the Autonomous Communities with an

[22] AGIRREAZKUENAGA, I., "Reflexiones jurídicas sobre la oficialidad y el deber de conocimiento de las lenguas", *en Estudios sobre la Constitución Española. Homenaje al Prof. Garcia de Enterria*, Civitas, t.II, Madrid, 1991, p.683-4, defends, in consonance with the Catalan Consultive Council, that ignorance of the autochthonous language cannot be alleged by the people who have been educated in this language, so that in future it could only be alleged by those who had resided outside the Autonomous Community.

autochthonous language, but it introduces subtle limitations, especially in connection with the Justice and the Army[23].

In short, the constitutional jurisprudence would understand that, even when this had not been explicitly included in the Statutes of Autonomy in the same terms as it is present in the new Statute of Catalonia of 2006, there exists a true linguistic competence that derives from the declaration of an official language entailing "the establishing of the linguistic rights and duties of the citizens before *all* (the cursive is ours) the branches of the public administrations" (FJ 4, Ruling of the Constitutional Court 87/1997).

Nevertheless, here come the limitations, the competence in linguistic matters may come against other central competences if it affects articles (e.g. the Justice System) in which the Constitution attributes to the central institutions competences in an exclusive manner. In general, the Constitutional Court defended in several rulings that the Autonomous Communities may regulate 'the scope inherent to the co-official status' (in connection with the Justice System FJ 10 Ruling of the Constitutional Court 253/2005, and in similar terms FJ 11 Ruling of the Constitutional Court 82/1986; in connection with the Military FJ 5 Ruling of the Constitutional Court 123/1988), but this assertion is restricted by indicating that the organisational or procedural aspects correspond to the central State bodies due to its exclusive competence in these matters.

The new Statute of Catalonia regulates in more detail the terms in which the existence of the two official languages should function in all the administrations present in Catalonia, establishing specific provisions about the need for the judges practicing in Catalonia to know Catalan. That is, it regulates the effect that the existence of two official languages has over the Justice System, although it leaves it for 'the laws' (central laws, it should be understood) in matters of justice to determine the formulae to guarantee the training of the judges. This provision, whose wording was accepted by the Spanish Parliament, seems to combine the two elements present in the constitutional jurisprudence: the autonomous competence to regulate the scope of bilingualism, and the material competence of the central authorities over a specific field, which confers them the organisational decisions needed to put the linguistic uses of its institutions into practice.

As Ruling of the Constitutional Court 247/2007 (FJ. 10) says: "What matters, in this sense, is that if the Statute of Autonomy, as a regulation with a limited territorial effect, should need to make some precision about the scope of matters of central competence, it should do so in order to favour a better concretion of the autonomous competences correlated with it, and that by

[23] CABELLOS ESPIÉRREZ, M. A., "La competencia en materia de llengua propia en el nou Estatut", *Llengua i Dret*, 49/2008, makes an interesting study of constitutional jurisprudence and the text of the new Statute of Catalonia.

doing it they should not impede the complete development of the functions belonging to the concerned central competence regulated in section 149.1 of the Spanish Constitution. Only when both these demands are satisfied will the actions keep up with the Constitution".

In this sense, Ruling 247/2007 of the Constitutional Court about the new Statute of Valencia includes some general reflections about the relationship of the statutes, as part of the block of constitutionality, with those organic laws which are coherent with what has been said about the Statute of Catalonia of 2006 and which include specific references to some of the topics mentioned. For example, FJ. 9 asserts: "This Court has also admitted a third type of demarcating statutory regulation, whose characteristic is that the Statute does not regulate the autonomous competence, but rather the central competence stated in section 149.1 of the Constitution, limiting its scope by reference to the constitutional provisions which remit to an organic law that may allow the statutory regulation of certain aspects. That has been the case, for example, in such relevant aspects as the Justice System, the Treasury or public security (sections 14901, 14 and 29 of the Constitution) among others. Indeed, the delimitation with respect to the Justice System has taken place in the so-called 'subrogatory clauses', through which the Autonomous Communities have taken on competences over aspects related to the administration of the Justice System which this Court has declared not to be included in the aspects of the Justice System, for which section 149.1.5 of the Spanish Constitution confers exclusive competence to the central authorities (Ruling of the Constitutional Court 56/1990, FF. 4, 5 and 6)".

The High Court, therefore, by analysing the distribution of competences between the statute and the exclusive central competences understands that the statutory regulation may refer to exclusive competences of the central authorities by choosing elements that may be excluded from that competence. What is more, the Constitutional Court has understood that the reference of the Constitution in favour of an organic law "is not and cannot be unconditional or unlimited" and that it is also "obvious that the content of that organic law is limited by the constitutional principles and provisions, among others those that regulate the distribution of competences between the State and the Autonomous Communities" (FJ 3, Ruling of the Constitutional Court 204/1992).

It seems reasonable to understand that the existing constitutional jurisprudence about the official autochthonous languages, together with the effects of the linguistic competence of the Autonomous Communities over the administrations located in their territories, should lead to the implication that this is one of those 'elements' not included in the exclusively central competences, leaving it just for the central legislator to take the specific organisational solutions needed to put into action those statutory provisions.

IV. CONCLUSION

The 'Linguistic Constitution' has been in effect for almost thirty years and there exists quite a consolidated interpretative jurisprudence about the scope of the linguistic rights and duties.

This jurisprudential and regulatory framework has contributed to asserting the competence on linguistic matters of those Autonomous Communities, even if their Statutes had not explicitly included it, so as to establish the scope of the official status of their autochthonous languages.

It has also recognised a territorial range for this competence, which would affect all the administrations in the territory so as to protect the linguistic rights of the citizens, who are the holders of these rights in their relationships with the authorities. In spite of the principle of territoriality, the official status of the languages must be enforced by the central administration according to the organisational measures that they may establish in accordance with their own regulations.

An abusive interpretation of the 'gradualness' in the adoption of these measures and rules necessary for the citizens to be able to make their own linguistic choices in the territories with an autochthonous language has distorted the territorial scope of the linguistic competence and the exercise of the individual rights before certain administrations. That has provoked the search for a rise in the rank and a higher level of definition of the consequences of the official status.

The new Statute of Catalonia tries to make effective the mandate of section 3 of the Spanish Constitution, determining the content of the official status of the autochthonous language with a greater level of detail in order to prevent situations of 'provisional nature' which limit the rights of linguistic choice of the citizens in their relationships with the authorities in their territory. The position of the statutes as a basic institutional regulation moulding the block of constitutionality, since they, at the same time, are the product of a negotiation and have the form of a central organic law, reinforces the position of the linguistic rights and duties.

An incidental conflict between the statutory linguistic competence and the exclusively central competences in those areas reserved to organic laws, should be solved by integrating the provisions deriving from the definition of the official status of the language in these areas and the organisational and material provisions necessary so that they are enforced by the central legislation.