

PRESENTATION: LANGUAGES AND STATUS. DOES OFFICIAL RECOGNITION MATTER? ¹

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This issue 67 of the *Revista de Llengua i Dret, Journal of Language and Law*, features a monograph on the legal statuses of languages in terms of comparative law. The section contains the papers presented at *The Status of Languages – Does Official Recognition Matter?*, an international conference organised by Linguapax in cooperation with the Public Administration School of Catalonia, held in Barcelona on 24 and 25 November 2016.

The concept of ‘official language’ –or other similar or related ideas– can be found in most language-related declarations in written constitutions.² Nevertheless, very little research has been conducted focusing directly on official recognition which is the higher legal status that can be given to a language and references in the context of comparative law are particularly sparse.

The contingent nature of the concept of ‘official recognition’ (or official language) may be one of the primary reasons for this situation, given that any legal and political approaches towards it are subject to the varying realities of each case. However, the widespread existence in written constitutions of the term ‘official language’ –which has significant power when it comes to shaping the linguistic legal framework and related policies– is the basis for a general approach to the concept, enabling certain common traits to be identified without prejudice to the specific individual characteristics of each socio-political context.

This is a topic that is particularly relevant now in Catalonia, where there is public debate over the status that should be given to the languages in use in the context of a hypothetical independent state. In this debate –which involves academics, politicians and other social agents– references are repeatedly made to ‘official recognition of languages’, albeit usually without specifying what this entails, and without shared understanding of its meaning or scope, both of which would appear to depend greatly upon the state framework in place.

The holding of the international conference and the publication of this monograph jointly fulfil both Linguapax’s primary goal, to identify strategies that can engender dialogue and understanding between different language communities, and that of *Revista de Llengua i Dret, Journal of Language and Law*, to examine all the relevant aspects relating to the legal status, dissemination and social use of the Catalan language.

The case studies

The monograph contains analyses of the legislation and language policies of six countries: Finland, Malta, Paraguay, Slovenia, South Africa and Switzerland. These states form a sample that is diverse in its geography (spread across three continents), demographics, politics, economics and culture. From a purely language-related perspective, the case studies also vary in terms of the profiles and situations of the languages granted official (or similar) status. Slovenia has declared Slovene its ‘state official language’, while other minority

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² PONS PARERA, E. (2015). *L’oficialitat lingüística. Declaracions constitucionals i implicacions jurídiques i pràctiques*. Barcelona: Departament de Cultura, Generalitat de Catalunya. <http://llengua.gencat.cat/web/.content/documents/publicacions/btpl/arxiu/14_Oficialitat_linguistica.pdf>

languages –Hungarian and Italian– enjoy official status at municipal level. In Finland, both Finnish and Swedish (as a minority language) are considered ‘national languages’. In Malta, the autochthonous or original language of the majority of the population (i.e. the language with a longstanding existence in a territory), Maltese, is the ‘official language’ together with English, the language of one of its former colonial rulers. This is similar to Paraguay, where Guarani (the original language) has official status alongside Spanish. In South Africa the constitution declares eleven languages to be ‘official’, including various African languages as well as English. And lastly, Switzerland gives equal recognition to three ‘national and official languages’, with one ‘national language’ –Romansh– assigned certain official uses at a federal level.

Without prejudice to the diversity described above, the studies included in this monograph analyse some common basic aspects – based on a preliminary questionnaire given to the speakers – relating to the general significance and the legal and practical implications of ‘official language’ or similar statuses. This is a methodology that enables a wide range of perspectives on the topic to be expressed alongside one another. For their rigorous work and contributions, the journal would like to express its gratitude to the authors, all of whom are renowned academics and specialists in the field of linguistic law or language policies: Albert Borg, Mattias Brenzinger, Albina Nécak Lük, Thomas Pace, Nicolas Schmitt, Markku Suksi and Miguel Ángel Verón. There was only one case, that of the study on India, where the aspects referred to above entailed differences so great as to make its inclusion infeasible, given the Journal’s editorial criteria.

Building constitutional agreement around language legislation

The first block analyses the treatment and position of languages in the general context of the constituent process, the main points in the debate on language in the founding moments of said process, the relationship with preexisting language history, the essence and scope of any further constitutional reforms, and possible external influences on the constitutional decisions made.

As regards the languages chosen for recognition in the constitution, a general idea that is evoked is that of a break or a split away from the previous state language, something that is not always achieved. A pattern that can be seen in Latin America and most African countries involves the colonial language maintaining its dominant position for official uses, while on a secondary level a native or indigenous language can be recognised as a ‘national’ or ‘official national’ language, a symbolic status that results in very limited or non-existent official functions. Paraguay’s case initially showed regressive development (until a reform in 1992), where the original language – which had not been significantly weakened by colonisation – had decreasing levels of official usage in the framework of the new independent state. One case that is particularly notable for the historical continuity of its language choices is the Finnish state-building process. And Slovenia is the only case in which the state’s independence has made it possible for an extensive range of official uses to be assigned to the native language, which had previously had a subordinate status.

Meanwhile, also in evidence in the language-related constitutional decision-making process is the importance of the historical factors unique to each case. A clear example can be seen in South Africa’s language model, which came about following the removal of the apartheid system in 1990. This country’s 1996 constitution gave official status to a number of African languages in addition to English and Afrikaans, in a bid to move away from its past policies of division and discrimination against its black population. In Malta, the negative influence of fascism is prevalent in its history from the first half of the 20th century, and this favoured granting the indigenous Maltese language and English with official status for public and official uses, rather than Italian. Malta’s constitution does however leave a door open for other languages to receive official status, with sign language given this recognition in 2016.

In any case, as is emphasised by various authors, the formal status languages are given tends not to result from a systematic decision or respond simply to population numbers, rather it is based on complex or even conflicting grounds, and may encompass certain components of popular myth (Switzerland, Finland). The potentially opposing forces include, on the one hand, that of popular pressure and organised society towards advancing the status of native languages (Paraguay, Slovenia), and on the other, the role of political elites in building a legal framework for existing linguistic diversity (Switzerland, Finland).

Political and legal significance of official status or other statuses by which languages are recognised

The second, central block examines the functional and identity-related aspects of concepts such as ‘official language’ status, and their relationships with other constitutional principles of the states where they are applied (with particular attention towards those relating to the territorial organisation).

As regards identity-related aspects, the responses received highlight the connection between language policies and the political vision in terms of national identity. This is a connection that includes a symbolic impact domestically on the notion of national unity, as well as a potential projection abroad as a sign of resistance against cultural and political impositions from powerful neighbours and the global expansion of a language such as English.

This factor is observed with significant variations across the different cases analysed. In Slovenia for example, where there is just one official state language, there are two opposing theories regarding the generic implications of this official status: a traditionalist or defensive view that gives prominence to the language as a sign of identity, and a vision which is more modern or related to a renewed language activism, oriented towards the global context of language acquisition and uses, linking the prestige of the language with general factors relative to the social climate and the degree of well-being. In South Africa, despite the idea of emancipation present in the decision to make African languages official within the constitution, the transformational effects that were envisaged have not transpired; the use of English has been consolidated while Afrikaans has suffered. In other cases, the adoption of two or more official or equal languages is seen as an excellent mechanism for national integration – especially when other shared national elements are limited– helping to project a vision of a country without conflicts (Switzerland) or to avoid talk of minorities (Finland), although in this case there is not an exact correspondence between the functional use and the languages recognised.

The unsteady equilibrium between the functional and identity-related aspects of official language status can affect the choice and definition of the terms used in the constitution. This can be seen in the case of Paraguay, where the identity-related concept of ‘national language’, applied to Guarani since the 1867 constitution, was replaced by that of ‘official language’ in 1992, so as to incorporate legal guarantees of its use. In Malta it can be seen in the deliberate lack of a legal or constitutional definition for the term ‘national language’ as applied to Maltese. This is in accordance with the idea of permitting various linguistic identities, but in practice it perpetuates the inferiority of the native language in a diglossic distribution of functional uses. In Finland, for essentially identity-related reasons, the term ‘national languages’ is preferred at a state level (the ‘official’ status of Swedish is declared only on the Åland Islands), and asymmetrical regulation of the official uses of Finnish and Swedish is allowed.

The functional implications of the ‘official language’ concept generally include the validity and use of the official languages in the legislative, executive and judicial powers and in all of the state’s public institutions (for example in article 3 of the Paraguayan constitution). This is a concept with a trend towards functional expansion, spreading the official functions of the language to all circles of life, including diverse internal and external communication channels (Slovenia). According to another perspective, one that is closer to Finland and is inspired by international texts, a series of rights can be derived from the concept of ‘official recognition’: the right to use whichever officially recognised language in social circles, protection against discrimination, equal linguistic treatment when being addressed by the authorities, the right to linguistic identity, linguistic rights in education, and the right to political and social participation in the recognised language.

However, more specifically, the functional scope of an official language is conditioned by the overall legal and political framework of the state where this official status is recognised (see following section). Because of its general influence, it is worth underlining the effects that stem from the territorial structure of the state (or the legal variations in the official language status across territories). For example, in Switzerland the principle of territoriality and the decentralisation of the language policy into the cantons – where normally just one language is present – mean there is *almost* zero discussion over which of the official languages to use in any given scenario. In contrast, South Africa’s lack of territorial guarantees and its directive to give official status

provincially to the minimum number of languages out of the eleven recognised in the constitution undermine the official status of most of the African languages. The territorial principle is also of key importance in Finland, where the legal classification of each municipality as mostly Finnish speaking or mostly Swedish speaking (the former category being greater in number and constantly growing) is something that in practice limits the official uses of Swedish and the supposed neutrality of the two national languages model. In the Slovenian model, with just one official state language, the official recognition of other languages is likewise aligned with local administrative divisions.

Legal projections and *de jure* and *de facto* variations of the official statuses of languages

In relation to the functional dimension, the third block set out to examine the way the official status is projected by law, taking a double approach: firstly, looking at the ability of this legal status to condition the way the legal framework on the use of languages takes effect, and secondly, looking at the variations of the official status, which affect the official uses of the languages concerned. These variations may be imposed by the legislator (*de jure* variations) or may stem from extralegal factors (*de facto* variations).

In the first instance, regarding the type of legal framework, despite the differences highlighted, there are significant points of contact between cases that might at first appear very different. To start with, the importance of a general linguistic law for strengthening and effective application of the native language's constitutional status is particularly notable in Malta, Slovenia and Paraguay. In South Africa the national legislator is afforded considerable scope for decision-making in the constitutional framework, but has not seen fit to provide regulation giving details or guarantees, with the negative results mentioned earlier concerning usage of most of the eleven languages given official status. In contrast, Finland's constitution establishes some basic language guarantees as regards its two national languages, without prejudice to their detailed legal implementation in administrative and procedural matters. To a certain extent, Switzerland is a countermodel, given that each canton's authority over its language makes many laws unnecessary at federal level, and political will in the implementation of language-related commitments is a key element.

As regards the second approach, in all of the cases analysed there were examples of legal variations on a functional level – besides the territorial variations already mentioned – that had positive or negative effects on the extent to which official languages were used. In South Africa this could be seen in the legal delegation of the planning measures adopted by public bodies in the decisions over which specific official languages were to be used in the different institutional and provincial areas. In Malta it is evident in the numerous regulations that give English special or exclusive preference (in education, commerce, banking, the publication of laws or decrees, etc.), while, in contrast, there is only one constitutional declaration that favours Maltese, making it the language of the courts. In Finland there is the fact that none of the parliamentary debates or works are translated into Swedish and neither are most of the sentences from the national courts. And lastly, in Slovenia there are varying degrees of legislation to protect Slovene in different types of communicative situations.

In addition, *de facto* variations can also make a significant difference to the real official uses of some languages. Specific examples include ideological factors such as supremacist ideologies in Paraguay or the population's ignorance about provincial language policies in South Africa, and sociolinguistic factors such as the role of English as a *lingua franca*, something which, in connection with globalisation, has an ever-growing influence on official language policies. More general examples include factors linked to the economic and political power relations present in society: in Malta, where people say the shared official status between the two languages is tainted by the dominance of English as the written language in the public arena; and in Paraguay, where in certain border areas Portuguese is taking the place of official languages in everyday usage due to the presence of Brazilian companies.

The importance of language policies

The final block of analysis looks at the relevance that can be attributed to policies aimed at ensuring the use of languages with official or similar statuses, especially policies launched by the government, but also with regards to the involvement of other private entities in the promoting and ensuring of official usage.

To begin with, the importance of public policies is clear if you start by looking at some languages' situations of historical disadvantage in the face of other languages used in international communications. While this is a circumstance shared by most of the countries analysed (with the latter role played by English and/or Spanish), the most salient case is that of South Africa, where mismanagement or a lack of management towards multilingualism benefited the strongest language – English. As a general consideration – which can be extrapolated to the Swiss case – legal recognition of a long list of official languages tends to transfer problems and potential paths towards solutions to the political arena and, in a broader sense, to the political will .

In models with a single state language, the relative importance of language policies may depend on the different perspectives or theoretical approaches to the language situation, and these may coexist: there is the Scandinavian model, which gives a central role for promotion and supervision to the existing language bodies; and then there is the French model, with a key part played by the regulator or legal component in the checking and sanctioning of language use non-compliances committed by institutions and their responsible individuals. Relating to this, in Slovenia a need has been identified to start reorientating the protection model towards a knowledge promotion model, and to redirect usage by means of planning measures (especially measures related to technology).

The area of educational policies remains central to whether or not the objectives of the multiple official languages model are achieved. In this field a wide range of difficulties are observed. The educational legislation in Malta, despite being based on the two official languages, tends to contrast the identity-related benefits of learning Maltese against the utilitarian benefits of mastering English. It also fails to ensure competency in Maltese beyond compulsory education. In Paraguay, the dual language education policies for Guarani and Spanish are not only biased and lacking in continuity, but also appear to fail to meet the objective of maintaining the Guarani language, instead increasing the degree of Spanish influence. Also in the educational policies of Switzerland, which are under cantonal authority, a certain level of failure has been highlighted in relation to the growing influence of English as a *lingua franca*.

Another element needed for the proper implementation of any declared official language status is public bodies with an appropriate technical setup and sufficient funding, tasked with designing, applying and supervising language policy and planning measures. Opposing this ideal however, there are significant problems arising from a lack of autonomy and linguistic bodies being subjected to political shifts in the government (in the cases of South Africa and Paraguay), as well as criticisms relating to the downgrading of their organisational rank (in Slovenia) and the linguistic contradictions committed in the course of their work (for example in Malta, the English-only name of a government agency set up in 2013 to deal with issues relating to citizens and the identities of individuals).

Lastly, it is important to pay tribute to the roles performed in various contexts by association-type organisations, groups of experts and other private entities in the development of ways to standardise and establish rules for their languages and to boost their prestige and usage. Some of the works worthy of most praise have been in Paraguay with the publication of the Guarani language rules, in Slovenia in the period prior to independence, and in Malta with the joint work between the network of associations linked by the National Council for the Maltese Language.

Does official recognition matter?

The authors' responses to this final question are unanimous in saying: **yes, of course official recognition matters.**

From among the reasons given justifying this answer it is worth highlighting the following, which to a notable extent relate to everything covered so far: official recognition entails preferential treatment for these languages in the distribution of state resources (Brenzinger); the legal element of recognising and regulating uses is of decisive importance in the framework of the policies aimed at language standardisation and real use of the language (Nécak); official recognition enables usage guarantees, particularly in high language functions, for languages that historically have been less well-regarded (Verón, Borg-Pace); official

recognition provides political stability and cohesion in complex language models (Schmitt), and guarantees a series of rights to speakers of the language (Suksi).

Nevertheless, the studies brought together in this monograph also underline that official status (a static dimension) is not enough for effective recognition and the development of language uses. Instead, this relies upon other preexisting conditions and factors that are connected with the political tide, and with language policies that are customised and adapted to changing circumstances (dynamic design).

In contexts where there are two or more official languages, it is important to take into account the variations of the legal framework that affect their official status and limit the projection of some languages in a varying number of official usage areas. Furthermore, the scope and the impact of extralegal type factors (*de facto* variations) was another one of the reasons provided, questioning not so much the official status's relevance, but its ability to ensure coherent and up-to-date usage of the language, based upon the wider knowledge possessed by the public. This inadequacy of the mere declaration of official status to redress situations of subordinate or diglossic uses affects native languages with a weak position in the preexisting state context, especially when faced with multiple official languages and no principle of territoriality.

To conclude, the international conference that gave rise to this monograph has at the very least enabled proof of the fact that linguistic diversity is a normal occurrence in contemporary societies. In line with this premise, official recognition does matter, but is not the only resource and is not enough to ensure a language's survival and wide range of use. To preserve languages, official statuses and derivative language policies must vary and be optimised in accordance with the context and social dynamics. As such, please accept our invitation to read the authors' fantastically enriching contributions to this monograph on a matter of great relevance, hitherto the object of very little research from a comparative perspective.