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The effects of Constitutional Court ruling 31/2010 dated 28 June 2010 on the linguistic regime of the Statute of Catalonia

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Abstract

In this article, after identifying the basic objectives of statutory reform in languages, the general characteristics of Constitutional Court in Constitutional Court Ruling 31/2010 and its effects on the statutory linguistic regime are examined. The specific target of critical analysis will be the arguments and interpretative declarations formulated by the Court in relation to the statutory principles of Catalonia's own language and official status and the sectorial linguistic prescriptions that cover the rights and principles related to institutions and public bodies, as well as their staff's ability to use official languages, education and the socioeconomic sphere. The final reflections will include a transversal reading of the ruling, within the necessary context in which it is inscribed, from the perspective of Catalonia's linguistic self-governance.

Key words: languages, official status, statute of autonomy, constitutional jurisdiction

1. Purpose and general characteristics of the ruling

On linguistic matters, within the framework of the Spanish Constitution (SC), the 2006 reform of the Statute of Catalonia (SoC) sought two basic objectives:[1]

> a) First, to consolidate or reinforce the basic principles and elements of the established linguistic regime framed in the 1979 Statute, first by Law 7/1983 on Linguistic Normalisation (LNL) dated 18 April 1983, which was later replaced by Law 1/1998 on Language Policy (LPL) dated 7 January 1998 and elevated to the rank of statute. Thus, it

[1] For further information, see, Pons (2006: 286-294).

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included, among others, the concepts of autochthonous language and official status, citizens' language rights and the school language model.

b) Secondly, to formulate relatively new principles where the evolution in the previous legal framework necessitated a norm with the status of statute – because of its condition as a basic institutional norm in Catalonia and simultaneously a special organic state law – to deal with issues which directly sprang from the Constitution (especially the declaration of the official status of Occitanian and Aranese, the explicit mention of the duty to know Catalan and the autonomous regions' competences on language matters) or to deal with the state institutions (such as language training of staff in administrations that depend on the state, language rights before state-wide constitutional or jurisdictional bodies and the state's involvement in protecting and encouraging the use of Catalan).

Both objectives were contained in a far-reaching regulation on language contained in the new 2006 Statute – in contrast to the summary formulation of the legal-linguistic principles in article 3 of the 1979 Statute[2] – which extended over different sections or chapters, as a systematic option coherent with the cross-cutting nature of language which determines the application of the language prescriptions contained in the different techniques of regulation and guarantee called for in the Statute.[3]

Even though the systematics on language remained intact during the reform proceedings in the Parliament of Catalonia and the Cortes Generales (Spanish Parliament), the text's run through the Congress of Deputies (the lower chamber) led to a modification of the content of approximately half the language precepts.[4] Later, after a positive referendum by the people of Catalonia, the reform of the Statute approved by Organic Law 6/2006, dated 19 July 2006 and in effect since 9 August 2006, was the subject of two appeals alleging general unconstitutionality filed by the Partido Popular and the Defensor del Pueblo (Spanish Ombudsman), through which – though they were not strictly identical[5] – they contested half of its language provisions.

[2] The 1979 Statute also contained references to collaboration with other territories and communities or with the state on language and cultural matters in article 27.4 and additional provision five.

[3] Specifically, language is present in the preliminary section (articles 5, 6, 11 and 12); in the section entitled "On the rights, duties and guiding principles" in Chapter III, "Language Rights and Responsibilities" (articles 32-36), Chapter IV (article 37.1, first clause) and Chapter V, "Guiding Principles" (articles 44 and 50); in section II "On the institutions" (article 65); in section III, "On legal power in Catalonia" (articles 101.3 and 102); and in section V, "On competences" within Chapter II, "Areas of competence" (articles 143, 146.3 and 147.1.a).

[4] See the table in the annexe. The changes in the language regime were the outcome of the amendments submitted by the Socialist Group in the Congress of Deputies (for a detailed analysis of the parliamentary proceedings, see Pons, E., Pla, A. "La llengua en el procés de reforma de l'Estatut d'autonomia de Catalunya (2004-2006)", *Revista de Llengua i Dret,* no. 47, 2007, especially pp. 197 and forward). Given the substantive nature of the changes introduced, the intervention of the General Courts entailed a major curtailment of the initial desire expressed by the Catalan political representatives on this matter.

[5] See table in the annexe. According to article 161.2 EC, neither of the two appeals had the effect of suspending the enforcement of the statutory norm (http://www10.gencat.cat/drep/AppJava/cat/ambits/recerca/desenvolupament/recursos.jsp).

Supreme Court Ruling (henceforth STC) 31/2010 dated 28 June 2010, which ruled on the appeal submitted by the People's Party almost four years later, shows eminently interpretative content on language matters, even though it declares the "...and preferential" clause describing the autochthonous language of article 6.1 SoC null and void.[6] The subsequent ruling dated 16 December 2010, which ruled on the appeal submitted by the Public Defender, refers wholly to the argumentation and decisions of STC 31/2010 with regard to the linguistic contestation, but with the new feature that it does not reproduce the dissenting opinions expressed in the former by four magistrates – one of whom concurs with the judge issuing the second ruling[7] – who wanted to substantially expand the pronouncement of unconstitutionality of the statutory norm on this and other matters.[8]

Before analysing the specific incidence of STC 31-2010 on the statutory linguistic regulations, we should briefly reflect on the general features of this ruling with regard to its purpose and the peculiar expressions that it adopts in the exercise of the jurisdictional function entrusted to the Constitutional Court (henceforth CC).

With regard to the first issue, the critical observations of the first commentators in STC 31/2010 on the degree of debilitation or weakness of the constitutional position of the Statute and its complementary function in defining the model of territorial organisation and, as its corollary, the linguistic model, can be transferrable to linguistic matters – furthermore, with a special rationale.[9] In this important aspect, which conditions the content and scope of the statutory norm, despite mentioning it several times, the CC distances itself from the original ruling in STC 82/1986, FJ 1, where it declared that "article 3.1 and 3.2 of the constitution and the corresponding articles in the respective Statutes are the basis of the regulation of linguistic pluralism with regard to its incidence in the sphere of officialdom in the Spanish constitutional order" (STC 82/1986, FJ 1), thus allowing the Statutes to take on a crucial role in defining and completing Spain's language model. It also unjustifiably omits the doctrine from the most recent STC 247/2007, FJ 15, on the reinforced constitutional power of the statutory lawmakers on linguistic matters, which derived from article 3.2 SC, which entails the "crucial importance that the constitution grants to the Statutes in the legal configuration of the matters regulated in these precepts". This is characterised by two notes: the possibility for the statutory lawmakers to regulate the implementation of this matter to a greater or lesser degree, and the ability to immediately create true subjective language rights (already admitted by the previous STC 82/1986, FJ 2, 3, 5 and 14).

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[6] See the table in the annexe, which clearly shows that STC 31/2010 actually entails broader and more general effects on statutory linguistic matters than can be gleaned from its verdict.

[7] The particular votes of the magistrates Vicente Conde Martín de Hijas, Javier Delgado Barrio, Jorge Rodríguez-Zapata Pérez and Ramón Rodríguez Arribas.

[8] Despite this remissive technique used in the STC dated 16 December 2010, the core of the linguistic issue in the appeal submitted by the Public Defender is reflected in the proportional part, which is almost one-third of the total, which focuses on its forerunners and the parties' allegations on this matter.

[9] This fundamental issue is addressed in FJ 3-6 of the ruling. With regard to the inescapable connection between language and the territorial model of Spain, see Aparicio (1997).

Consequently, the first feature that we should highlight from STC 31/2010 is the distorted or biased configuration of the canon of judgements applied to the language provisions, which the special position and constitutional function attributed to the Statutes in this matter by article 3.2 SC is neglected: first, by omitting the specific sense of this reference which, based on the general characteristics that define the specific position of the Statutes in the system of sources, is targeted at guaranteeing the state's intervention in approving and reforming Statutes as a necessary condition for the ultimate binding status for the statutory linguistic determinations, in relation to the territoriality of the official status of the languages other than Spanish (already affirmed in STC 82/1986);[10] and secondly, by the restrictive conception implicit in the scope of the statutory reservation of article 3.2 SC, which seems to be circumscribed now by the authority to declare and specify the effects of the official status of the unique or autochthonous language of the autonomous community, such that is it confused with the scope that the CC previously recognised for the language competences of the autonomous regions' legislative powers.[11]

These considerations lead us to the second of the preliminary questions. Indeed, as a result of the aforementioned deactivation of the special position of the Statute as a linguistic norm, the CC's leeway of discretion was expanded to assess its constitutionality, which enables it to impose an entire series of limits on the statutory lawmaker from the migrated constitutional provisions in this matter (and especially from article 3.1 SC, which monopolises the canon of constitutionality). In this way, the SC tends to situate itself within STC 31/2010 as an almost unconditional interpreter of the constitutional concepts,[12] a position which contrasts with the special deference that the statutory lawmaker used to deserve by virtue of not only the presumption of validity of the laws reinforced by the qualified democratic legitimacy of the Statute as a norm approved by two lawmaking bodies (the Spanish Parliament and the Catalan regional Parliament) and supported by the people, but also the reinforced constitutional authority on language matters. In this sense, a tilt towards the thesis of the ruling can be noted under the influence of the doctrinal sectors from other parts of the state which in the wake of the Catalan reform stressed the perils or risks derived from the *constitutional model* of linguistic pluralism compared to a model of *linguistic territorialisation* grounded upon the concept

[10] Generally speaking, this is the meaning of the Albertí (2010) statutory reservation. Based on this meaning of the reservation, one could uphold the constitutionality of the declaration of official status for Aranese contained in Law 16/1990, on the special system in the Vall d'Aran, given that its effects are circumscribed to the public authorities of Catalonia and Aran (Pons, 2006: 317-318).

[11] The CC's identification of this linguistic competence, based on the general orders to the autonomous regions' public authorities in the first statutes to "guarantee the normal and official use of both languages" (for example, in article 3.3 CCSF) was projected onto the regulation of the "contents inherent in the concept of official status" or the "scope" of its regulation and onto the normalisation of the autochthonous language (see, among others, STC 82/1986, 74/1989, 123/1988, 56/1990 and 87/1997).

[12] One example of this desire expressed by the CC in the ruling is framing itself as an "extended constituent power", an expression which contrasts with the limits that govern its interpretative function of the constitution, as a constituted power, as a text open to numerous interpretations, including, in a qualified fashion, the statutory lawmaking body (Aparicio, 2010).

of *autochthonous language*, contrasting it to *shared, common language* (which is, in fact, nonexistent in the SC), that is, Spanish.[13]

In more specific terms, the legal grounding of STC 31/2010 is characterised by an abundance of interpretative declarations that affect the meaning and scope of the statutory linguistic precepts being ruled upon, with the added particularity that many of this verdict is not shifted to the provisions. The arguments or judgements sustaining the CC's conclusions tend to be brief and apodictic, expressed via the formulation of interpretations and consequences which are presented as definitive, obvious or indisputable. What is more, in an analysis of the language provisions, what often prevails is a preventative kind of argumentation through which the CC poses a hypothetical situation that it regards as contrary to the constitution, but which cannot necessarily be gleaned from the statutory text, and then it goes on to exclude it and formulate its own interpretation. In short, the general features of this ruling on linguistic matters contrast with the rationalising role which – without excluding certain debatable decisions – constitutional jurisprudence had developed in the legal-linguistic debate, and it tends instead to introduce elements of legal insecurity into the job of the lawmaking bodies and legal implementers and to reopen ambiguities on issues that seemed to have enjoyed sufficiently broad political consensus.

2. Autochthonous language as a legal concept

Article 6.1 of the 2006 Catalan Statute defines the concept of *autochthonous language,* which has a longstanding tradition within Catalonia's legal system[14] based on some of its effects provided for in advance by the lawmakers.[15] In this legislation, the notion is deployed threefold in the dimension of collective identity, which is also present in article 5 SoC, by proclaiming the historical rights of Catalonia and the unique position of the Generalitat with regard to language; the guarantee of Catalan's uses in certain institutional spheres; and its connection with the desire to normalise the Catalan language, which is now

[13] See, Solozábal (2000) before the reform and López Castillo (2008) and López Basaguren (2007) after it.

[14] As a legal notion, the term *autochthonous language* comes from the previous Statute dating from 1933, which attempted to remedy some of the limitations imposed by the Republican Courts on the 1932 Statute. Subsequently, the 1979 Statute revived this concept, which stressed it in the first paragraph of article 3, based on which it secured an initial implementation in the 1983 Law on Linguistic Normalisation, which was later expended by the 1998 LPL.

[15] The wording of article 6.1 in the Statute approved as Organic Law 6/2006 is: "Catalonia's own language is Catalan. As such, Catalan is the language of normal and preferential use in Public Administration bodies and in the public media of Catalonia, and is also the language of normal use for teaching and learning in the education system." Because of the incidence of the assessment of the effects of the CC's legal ruling on this precept, it should be noted that the second section of the original wording by the Parliament of Catalonia, approved on 30 September 2005, referred to "the language of everyday and preferential use in the public administrations and media of Catalonia", thus altering two consequences of the notion that the LPL declared as unique with regard to the administrations and institutions of Catalonia (article 2.2.a LPL, in which Catalan is "the language of…", in the sense of the normal, habitual or default language) and in the state administration in Catalonia (for which, in accordance with article 2.2.b LPL, Catalan is the "language preferentially used […] in the form that it determines").

expressed in the demands for the protection and dissemination in Catalan in article 50 SAC.

Even though according to the statutory lawmakers' margin of discretion we should assume the full legitimacy of including a broader regulation of this concept in the SoC, based on the argumentative keys noted,[16] STC 31/2010 maintains the concept of autochthonous language, but it disfigures the characteristic outlines of the Catalan legal-linguistic system by confusing it with the distinct concept of official status and partially voiding it of content.

It is quite symptomatic of the latter that the analysis of article 6.1 SoC (in FJ 14.a) starts by referring to the concept of official status as established by STC 82/1986[17] – which shall be analysed below – although, as a new feature, the CC now draws a consequence – later contradicted, as we shall see, within the same ruling – that affirms the requirement for strict equality in the system of official status of both languages, by saying: "The definition of Catalan as 'the autochthonous language of Catalonia' cannot entail an imbalance in the constitutional regime of co-official status of both languages at the expense of Castilian Spanish" (FJ 14.a).[18]

The CC then subjects the notion of autochthonous language to an interpretative reconstruction which is grounded upon three arguments: the first, dovetailing with allegations from the Attorney General, results in equating it with the "peculiar or primitive language of Catalonia, in contrast to Spanish, a language shared with all the autonomous communities";[19] in the second, the concept is identified with its purpose, adding to the authorising meaning inherent in article 3.2 SC a conditioning or limiting element of discretion of the statutory lawmaker, which can only declare a language that coincides with the history of a region as an official second language;[20] the third pillar, a corollary of

[16] The second interpretative key noted – restriction of the scope of the reservation of article 3.2 SC – becomes important here when article 6.1 SoC is interpreted in the sense that "it must be understood that the statutory lawmaker has only wanted to adhere to the mission that the constitution reserves exclusively for the Statutes, that is, to the qualification of a language as official in the 'respective' autonomous community, as per article 3.2 SC" (FJ 14.a, paragraph three).

[17] See the clear confusion with which this matter is introduced in FJ 14.a): "Beginning with the issue on the autochthonous nature of the Catalan language and the consequences stemming from this, as is required the Statute of Catalonia is the competent norm for attributing to Catalan the legal status of official language of this autonomous community (art. 3.2 SC), shared with Spanish as the official language of the state (art. 3.1 SC)."

[18] The term *co-official status*, created by jurisprudence, encompasses consequences that could potentially weaken the official status of the autochthonous languages of the autonomous communities – which are accentuated within this ruling – inasmuch as it seems to condition it upon the presence of another official language; as a result, Catalan doctrine tends to prefer the term *double official status*.

[19] The constitutional text's silence evidences the ideological burden underlying the descriptions applied by the ruling to the different languages: Catalan as "exclusive" or "characteristic" (Fj 14), compared to Spanish as "shared with all the autonomous communities" (FJ 14) or "the only common language of Spain" (FJ 21).

[20] In accordance with FJ 14.a of the ruling: "In effect, article 3.2 SC does not allow the Statutes to proclaim the official status of any language of Spain other than Spanish [...] The language of Spain liable to being proclaimed official by a Statute is the language of the 'respective' community, that is, the characteristic, historical, exclusive language, in contrast to the language common to all the autonomous communities, and in this sense its own autochthonous

the previous one, is the attribution of the notion of descriptive character of a "reality of normal [the adjective 'normal' is truly protean within this part of the ruling] and habitual use",[21] which is coherent with the CC's desire to partially deactivate the legal effects inherent to the statutory notion.

With regard to the consequences of this jurisprudential reinterpretation of the notion of autochthonous language in article 6.1 SoC, we should note the following: first, the expression *language of normal use* – previously endorsed by STC 46/1991 and 337/1994 – is identified, beyond its previous descriptive nature, as one of the effects of official status which in Catalonia would be shared with Spanish; and secondly, given the difficulty of reconducting it to a descriptive as opposed to prescriptive sense of the reality, the expression *language of preferential use* is declared unconstitutional in the Statute.[22] Immediately, however, the CC discards the potentially more restrictive consequences of this ruling by stating that it does not hinder the continuation of language policies in favour of the Catalan language enacted by lawmakers:

language." (FJ 14.a, paragraph three). "The autochthonous nature of a language of Spain other than Spanish is therefore a necessary constitutional condition for its recognition as an official language by a Statute". (FJ 14.a, paragraph four).

[21] In this sense, the CC states the following: "By declaring Catalan the autochthonous language of Catalonia, it is the language of 'common use' of the public administrations and public media of Catalonia, it fills the role of accrediting the effective concurrence of that constitutional condition in the case of the Catalan language in that the 'normality' of this language is nothing other than the accreditative assumption of a reality which, characterised by the normal, habitual use of Catalan in all orders of social life in the autonomous community of Catalonia, justifies the declaration of this language as official in Catalonia, with all the legal effects and consequences which should be gleaned from this official status and from its concurrence with Spanish based on the constitution and its in setting." (FJ 14, paragraph four, *in fine*).

The potentially harmful effects for the protective language system of the underlying argument in the passage transcribed and translated above should be noted, according to which normality, as a descriptive shift in the extent of the social use of the language, is opposed as an element that may condition advances in the status of the language. Counter to this argument, we should recall that since STC 82/1986, the CC has delinked official status from the reality and social weight of the language, and that the situation of precariousness in the social uses is precisely the condition that justifies specific protective measures for so-called *regional or minority languages*.

[22] The CC's reasoning is as follows: "Unlike the notion of 'normality', the concept of 'preference', by its own nature, transcends the mere description of a linguistic reality and implies the primacy of one language over another within the territory of an autonomous community, in short, imposing the prescription of the priority use of one of them, in this case, Catalan over Spanish, at the expense of the compulsory balance between two equally official languages, neither of which should receive privileged treatment. The definition of Catalan as the autochthonous language of Catalonia cannot justify the statutory imposition of the preferential use of that language to the detriment of Spanish, which is also an official language in the autonomous community, by the public administrations and public media in Catalonia [...] therefore, not accepting this insertion '...and preferential' from article 6.1 SoC as an interpretation in line with the Constitution, it must be declared unconstitutional and therefore null and void." (FJ 14.a, paragraph five).

In the passage transcribed above, we cannot ignore the negative connotations of the language used by the CC when analysing the statutory concept of preference, which is interpreted in terms of "imposition" and "privilege", while these terms do not appear in relation to the single language that the SC imposes (by means of the formulation of the duty for all Spaniards to know Spanish) or privilege (since it is the only one expressly identified by name and it benefits from official status statewide).

> *clearly without prejudice to the appropriateness that the lawmaker may adopt, if applicable, the proper and proportionate language policy measures aimed at correcting historical situations of imbalance in one of the official languages with respect to the other, should they exist, thus rectifying the possible secondary position or neglect of one of them.*

The argument used here, which extends to other parts of the ruling – such as in relation to the statutory proclamation of linguistic rights and responsibilities – consists of negating or strictly delimiting the margin of binding legal configuration of the statutory lawmaker, while also recognising a broader sphere of action for the ordinary lawmaker.[23] In any event, the ambiguous terms and clearly preventative spirit that frame the legitimacy of "language policy measures" in favour of Catalan in FJ 14.a) do not exclude other possible legitimate justifications – apart from the argument of historical imbalance, which while displaying a surprising historical forgetfulness, the ruling captures conditionally – of the measures to defend Catalan, nor do they abstractly precondition what kind of measures – promotional or more constrictive – the public authorities may adopt.[24]

In short, the CC's ruling on the notion of *autochthonous language* shows a restrictive rigour of the statutory system to protect Catalan, which was given somewhat weak baseline arguments and seems more inspired by the desire to protect the position of Spanish in Catalonia. Nevertheless, the notion of *autochthonous language* is still present, as a notion distinct from official status, in the frontispiece of the statutory language regulation without other projections of the concept being questioned by the ruling – such as in the realms of education and local administrations – and without prejudice to the possibility of justifying the measures adopted by the public authorities to protect Catalan from other perspectives – including the status of *regional or minority language* in the terms defined by the European Charter on Regional and Minority Languages.[25]

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[23] If this interpretative operation, which is targeted at degrading the normative value of the Statute, seems difficult to justify in relation to the contents of the Statute not expressly provided for by the constitution (see the criticisms levelled by Carillo [2010] cited in relation to the same argument applied to the regulation of rights, where he describes it as paradoxical that it is argued so assertively by the SC that what both lawmakers do 'is so different'), although it would be even more difficult to justify on language matters given the express authorisation of the statutory lawmaker – state and regional parliaments –as contained in article 3.2 SC.

[24] In the introductory study to the compilation *Drets lingüístics per a tothom. Estudis de dret lingüístic*, A. Milian, states that "the vast majority of democratic language policies that aim to safeguard a language – or to mitigate its assimilation – include requirements and impose, in some cases, the use of at least the protected language (that is, without preventing the simultaneous use of other language) and even limit the use of the dominant language, an issue that is subjected to much more severe legal conditions and is limited to public activities" (2010: 31).

[25] Without wishing to delve too deeply here into Spain's commitments derived from this international treaty, we should recall that in accordance with its article 7.2, "the adoption of special measures in favour of regional or minority languages aimed at promoting the equality of speakers of these languages and the rest of the population or aimed at bearing in mind their particular situation is not considered an act of discrimination against the speakers of more widespread languages".

3. Official status, revisited

Article 6.2 SoC proclaims the official status of Catalan and Spanish in Catalonia and outlines, in equivalent terms for both languages, the basic rights and responsibilities derived from their official status, along with the right not to suffer from discrimination for linguistic reasons.[26] The ban on language-based discrimination is reiterated in article 32 SoC, and this precept, which also encompasses the previously established jurisprudential notion of official status, has not been contested.[27]

On this point, STC 31/2010 is characterised by extracting consequences heretofore unseen within the jurisprudence on the official status of the Spanish language and the duty to know it as contained in article 3.1 SC. In effect, despite formally framing its argument in previous jurisprudence, in accordance with which the constitution

> *enables us to state that a language is official, regardless of its reality and weight as a social phenomenon, when it is recognised by the public authorities as the normal means of communication in and among them and in their relation with the private subjects, with full validity and legal effects* (STC 82/1986, FJ 2),

here the official status of Spanish undergoes a reformulation whose argumentative base lies in the variable use of the notion of *normal use* as a defining element of the concept.[28]

Thus, while we have seen that in FJ 14.a) of the ruling, the "normality" of use was envisioned as a generalisable or shared consequence for all official languages (from which precisely the ban on statutorily declaring the "preferential" use of one of them derived), in FJ 14.b) "normal use" becomes the exclusive prerogative of Spanish, linked by the CC to the duty to know this language. Based on this asymmetrical construction of the official status of languages, it is claimed that the public administrations may use Spanish as a "normal" means of communication with citizens without the latter being able to

[26] According to article 6.2 SoC: "Catalan is the official language of Catalonia. So is Spanish, which is the official language of the Spanish state. Everyone has the right to use both official languages, and the citizens of Catalonia have the right and duty to know them. The public authorities of Catalonia must establish the measures needed to facilitate the exercise of these rights and fulfilment of this duty. According to the provisions of article 32, there can be no discrimination based on the use of either of these two languages."

[27] Article 32 SoC states: "Every person has the right not to be discriminated against on the basis of language. Any legal act performed in either of the two official languages is therefore linguistically fully valid and effective."

[28] The same element of normal use as a definition of official status has yet another different jurisprudential application within the recent Interlocutory 27/2010, dated 25 February 2010, in which it serves to distinguish the status provided for in article 3.2 SC with respect to the possibility of legally regulating certain language uses of citizens, with legal effects, before the public administrations (in relation to article 4.2 of Law 1/1998 on the use and promotion of Bable/Asturian) without the previous statutory declaration of official status.

demand that they use another language, a consequence which is denied for the other official languages.[29]

The CC made this *revisited definition* of the official status of Spanish pivot around such a controversial and legally and socially delicate element as the "duty to know Spanish",[30] and it has ulterior consequences on the interpretation of the scope of the official status of Catalan which, as defined by the statutory lawmakers as parallel to Spanish (articles 6.2 and 32 SoC), is the subject of a corrective reinterpretation by the CC in relation to the consignment of the duty to know Catalan, which was one of the new features of the 2006 reform.

Even though the ruling correctly notes the disjoint between the legitimacy or lack of legitimacy of statutorily introducing a duty to know another of the official languages,[31] the prevailing keys to the arguments in the ruling lead the question to be falsely closed. Thus, after reiterating the constitutional doctrine that connects – via amorphous allusions – the duty to know Spanish with other constitutional provisions – although we could legitimately ask which ones[32] – the CC identifies, as we have noted above, the constitutionalised duty with an authority of "normal use" of Spanish by the public powers, preventing citizens from the possibility of demanding that they use another language, a prerogative which

> *guarantees communication with the public powers without the need to know a second language. With regard to the citizens' duty, this corresponds to the correlative right or authority of the public power, as*

[29] According to the CC: "The constitutional duty to know Spanish, more than an 'individualised and required' (STC 82/1986, FJ 2) duty to know that language, is actually the counterpoint of the public power's authority to use it as a normal means of communication with citizens without their being able to demand that another language be used – outside the cases, now irrelevant, in which the right to defence at trial may be at stake (STC 74/1987, 25 May 1987) – so that the *imperium* acts which are the object of communication regularly implement its legal effects. In the case of official languages other than Spanish, the public powers do not have an equivalent authority [...]". (FJ 4.b, paragraph two).

[30] The constitutional reception of this duty, which stems from article 4 of the Republican constitution of 1931, motivated opposing positions during the constituent debates of 1978 and statutory debates of 1979. The doctrine, with some jurisprudential support (STC 82/1986 and 74/1989), has conceived it for some time as a presumption of knowledge that serves to guarantee official status, but the CC now rejects an integrated interpretation of article 3.1 SC and instead chooses an individualised conception – which is quite debatable in the terms with which it is formulated – of the constitutionalised duty.

[31] According to this position, the basic question is whether the nonexistence of a constitutional duty to know the *co-official* languages in the autonomous communities "means the prohibition on this duty being imposed in a Statute or, to the contrary, whether that option is open to the regional lawmakers and is one which they may legitimately choose" (FJ 14.b, paragraph one). By rejecting the possibility of introducing the duty to know Galician via an ordinary law as an aspect linked to the core of official status, FJ 2 of STC 84/1986 dated 26 June 1986 left the door open to the introduction of a duty via regional laws, but the CC now closes this possibility by drawing an abstraction from article 3.2 CE.

[32] In this case, the argument is not new and STC 82/1986 contained an unspecific allusion to the "duty that is concordant with other constitutional provisions which recognise the existence of a shared language among all Spaniards, whose knowledge may be presumed in any event, regardless of factors of residence or vicinity" (STC 31/2010, FJ 14.b, paragraph one).

> *the administration has no right to address citizens exclusively in Catalan, nor can citizens presume their knowledge of it, and therefore formalise this presumption as a duty of Catalan citizens (FJ 14.b).*

The underlying argument of this new understanding of the duty contained in article 3.1 SC seems paradoxical at least: it is sustained on the affirmation of a "right" or "authority" of the public powers, counter to the general principle that attributes rights to citizens, while the administrations would be the passive subjects which must generally satisfy these rights.

However, the ruling does not contain a declaration of unconstitutionality of the duty to know Catalan; rather it undertakes a restrictive interpretative reconstruction of the meaning and scope of article 6.2 SoC which – although according to the CC the precept admits "*naturally*" – is rather incoherent with its literality and with the very statutory system,[33] by reconducting it to a "specific" and "individualisable" right in the sphere of education and public function, in which the subjects would no longer be "the citizens of Catalonia" (a concept defined by article 7 SoC and also the subject of a restrictive reinterpretation in FJ 11).[34]

In summary, the revisited notion of official status arouses numerous doubts and possible objections, not only because of the internal contradictions in STC 31/2010, in deriving SC prerogatives for Spanish from article 3.1 that are opposed to the equality or parallelism of the official languages that the constitution itself declares, but also because the purported superiority of the official status of Spanish in Catalonia seems to be grounded upon a given ideological understanding – never defined – of the constitutional language model with which there would exist a single necessary official language while reserving secondary or subordinate status to the other official languages. Despite this, the CC's argumentation does not disfigure the notion of official status for languages in terms of its basic conceptual core of validity and the

[33] With regard to students, the duty to know both official languages is not consigned in article 35.2 SOC.

[34] According to the CC: "Art. 6.2 SoC would be unconstitutional and null and void in its pretence of imposing a duty to know Catalan equivalent in meaning to what can be gleaned from the constitutional duty to know Spanish. Despite this, the precept naturally allows a different interpretation in conformance with the constitution, although, as the precept directs a mandate to the public powers of Catalonia so they should adopt 'the measures needed to facilitate... fulfilment of this duty', it is clear that this could only be an 'individualised and required' duty to know Catalan, that is, a duty of a different nature than the duty to know Spanish in accordance with art. 3.1 SC (STC 82/1986, FJ 2). Therefore, here there is no counterpoint whatsoever to the authority of the public power of the Generalitat to exclusively use Catalan in its relations with citizens, which would be improper; rather it is not a generalised duty for all citizens of Catalonia but the imposition of an individual duty that must be fulfilled whose specific place is in the sphere of education, as stems from article 35.2 SoC, and the sphere of special relations that bind the Catalan administration to its civil servants, who are obliged to meet the right to language choice recognised in art. 33.1 SoC". [...] "Here, however, the only thing that matters is that envisioned as a duty of a different nature than the duty which may only encompass Spanish, that is, as a duty that is not legally required of everyone, the duty to know Catalan has its own purpose which justifies it as a mandate and which enables it to be interpreted as in conformance with the constitution" (FJ 14.b) paragraph three).

production of legal effects from the legal acts and communications and notifications (article 32 SoC, not contested, in relation to the interpretation of article 50.5 SoC, analysed below),[35] nor does it question the link between the presumption of knowledge contained in article 6.2 SC and the obligation of the public powers in Catalonia to "establish the measures needed [...] for compliance with this duty" with regard to the two official languages (article 6.2 SoC). Consequently, nor does is subtract legitimacy – nor obviously can it create a *tabula rasa* – from the actions implemented in Catalonia to ensure access to and to spread knowledge of Catalan among its citizenry,[36] with quite far-reaching results which contrast with the current jurisprudential interpretation of article 3.1 SC, which seems aimed at constitutionally protecting the exception of not knowing Catalan by some of the Spanish citizens living there.

4. The interpretation of the sectorial language prescriptions

Apart from article 6 SoC, the core of the statutory language system, STC 31/2010 formulates several interpretative declarations that affect other sectorial language prescriptions. Even though these declarations are conditioned by the restrictive configuration of the judgement parameter and the analysed interpretation of the basic language principles, the legal reasoning behind the ruling adds other arguments which somehow contribute to shading the preceding restrictive statements and provide new interpretative clues as to the statutory linguistic order.

[35] This conclusion is ratified by a parallel reading of the aforementioned Interlocutory 27/2010 dated 25 February 2010 in which the CC admits the production of legal effects in accordance with article 4 of Law 1/1998 dated 23 March 1988 on the use and promotion of Bable/Asturian, on communications between citizens and public administrations in Asturian. This legal recognition is considered admissible without the prior statutory declaration of official status (which contrariwise does exist for Catalan in article 6.2 SoC, with the specification of its effects for article 32 SoC), a concept that in FJ 5 of the ICT is distinguished from the protective system of Asturias in the following terms:

"[...]The aforementioned legal precept does not recognise Babel/Asturian as a 'normal means of communication' within the regional administration, nor is it attributed this condition in the relations that this administration engages in with the private subjects 'with full validity and legal effects', identifying factors of the official status of a given language. In other words, the legal precept does not attribute to citizens the right to choose the procedural language, and instead it limited to imposing upon the administration of the Principality of Asturias the obligation to process written texts that the citizens send to it in Babel/Asturian. If the norm is viewed from another perspective, its main virtue consists of depriving the regional administration from any discretionality when accepting the communications it receives in this language. From the obligation to process these writings we can glean their validity for all administrative purposes, and in particular recognition of their efficacy to paralyse the calculation of deadlines or prescriptions of administrative actions [...]"

[36] The impossibility of establishing the duty to know the official languages other than Spanish was endorsed by a sociological argument at the end of the Franco regime, given the impossibility for much of the population to gain access to knowledge of the language. Today, the *Enquesta d'usos lingüístics de la població 2008* cites percentages of around 95% of the population of Catalonia that understands Catalan (http://www.idescat.cat/).

4.1. Public administrations and institutions

As a privileged sphere of projection of the principles of autochthonous language and double official status, the 2006 SoC includes diverse references to public administrations and institutions, which are judged by STC 31/2010 from three perspectives:

a) Language rights and uses

In accordance with the systematics in the first section in the SoC, Chapter III recognises citizens' right to language choice before "the public institutions, organisations and administrations in Catalonia [...], including the electoral administration in Catalonia, and in general the private entities on which they depend when exercising their public functions" (article 33.1 SoC),[37] which is specified with regard to the administration of justice and certain legal professions (article 33.2 SoC);[38] and Chapter IV regulates language uses of the Catalan administrations and institutions, as the guiding principle (article 50.5 SoC, which literally reproduces article 9 of the 1998 LPL).

Generally speaking, the CC's intervention in this aspect does not question the constitutionality of the statutory language regulation, as long as it affects the public functions implemented by these bodies and institutions,[39] although according to the interpretative bent noted above it does strive to accentuate some of the statutory lawmaker's options and weaken others. In the first sense, the ruling reaffirms the legitimacy of the statutory formulation of language rights as projections of co-official status, whose specification in the 2006 SoC contributed to stressing parallelism in the treatment of all the official languages.[40] In the second sense, we can note a certain blurring of the distinction between the language regime applicable in the local administrations of Catalonia (articles 6.1, 33.1 and 50.5 SoC) and the state administrations in Catalonia (articles 33.1, 2 and 5 SoC), which exemplifies the use of the expression *public power located in Catalonia* (FJ 23, paragraph four). This latter interpretative pattern reflects a certain homogenising bent inherent in the conception of *co-official status* upheld by the CC, which entails a partial legal distortion of autochthonous language as the underpinning of this regulation,

[37] Only questioned regarding the term *citizens*, which is interpreted in FJ 9 and 11 of the ruling.

[38] Article 33.2 SoC: "In their relations with the administration of justice, the Tax Ministry, notary publics and public registries, everyone has the right to use the official language of their choice in all legal, notary and registry actions and to receive all official documentation issued in Catalonia in the language requested, without their having to suffer from undue defencelessness or delays because of the language used; nor may they be required to provide any kind of translation."

[39] This limitation of the effects of the regulation established by articles 33.1 and 50.5 SoC to "public functions" enables the recurring generic allegations grounded upon articles 10.1 (dignity of the person), 38 (freedom of enterprise) and 139.2 SC (market unity) to be disregarded.

[40] The CC frames the favourable ruling on the constitutionality of article 33.2 SoC by the following consideration: "From the declaration of official status, it follows by constitutional imperative and without the need for any regulatory intermediation its condition as official language for all the public powers located in Catalonia, be they state, regional or local, providing citizens the right to use both languages in their interactions with these public institutions (SSTC 134/1997 dated 17 July 1997, FJ 2; and 253/2005 dated 11 October, FJ 10)" (FJ 21, paragraphs five and six).

where the argument of "normal use" is targeted at guaranteeing the position of Spanish in the state administrations in Catalonia.[41]

This argumentative thread takes shape in an interpretation of article 50.5 SoC in line with the constitution: with regard to internal or inter-administrative language uses, the terms of the constitution would allow the normal (or default) use of Catalan to remain intact in that the negative limit established ("without prejudice to being able to also use Spanish with normality") implies not excluding Spanish – as already holds true today – without this leading to any direct positive obligations for the administrations; with regard to external uses or relations with citizens, even though the normal use of Catalan is also allowed, the limit is specified as the ban on this leading to burdens or obligations for citizens who wish to receive communications in Spanish.[42] Even though this last point arouses doubts regarding the feasibility of a practical application of the ruling, it is indeed feasible to explore appropriate administrative solutions (such as through the possibilities offered by electronic communications on the availability of documents in different languages), a job which should also involve the administrations that depend on the state located in Catalonia, which are bound by the double official languages.[43]

Therefore, despite the fact that the ruling's argumentation superimposes a partially different logic than that contained in the statutory regulation, its pronouncements positively reaffirm the binding nature of the right to language choice in all the public administrations and institutions located in Catalonia, and especially those that depend on the state as outlined in article 33.1 and 2 SoC. Likewise, it also preserves the normality of the use of Catalonia derived from article 50.5 SoC by the local administrations "in the framework of the policy to foster and spread Catalan" – terminology which dovetails with the rubric of article 50 SoC.[44]

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[41] In this sense, the STC claims the following: "[...] All official languages are, therefore, – likewise wherever they share this quality with another language of Spain – languages of normal use by and before the public powers. In consequence, so is Spanish by and before the Catalan public administrations, which, as the public state power in Catalonia, cannot show preference for either of the two official languages" (FJ 23, paragraph four).

[42] According to the CC interpretation: "The precept, however, is in conformance with the constitution since it can be interpreted in the sense that, within the policy of encouraging and spreading Catalan, the public entities, institutions and companies to which the precept refers can use Catalan with normality, without prejudice to being able to also use Spanish with normality in their internal relationships, in relations among them and in their communications with private individuals, as long as the proper mechanisms are in place to ensure that the citizens' right to receive these communications in Spanish can be carried out without either formalities or conditions that entail a burden or obligation for them in their position as active subjects in their relations with the public administration." (FJ 23, paragraph five, end).

[43] In relation to the latter, the second report on the application in Spain of the European Charter of Regional or Minority Languages, adopted by the Council of Europe on 4 April 2008, covers the partial noncompliance with the order in article 10.1.b), which requires the peripheral state administration to make administrative forms and texts available in Catalan (http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/SpainECRML2_es.pdf).

[44] Therefore, the ruling does not impose the establishment of bilingualism in the functioning of the administrations in Catalonia and enables the basic continuity of the language model shaped by the 1979 Statute and the lower-ranking norms and laws that implement it. In this sense, and inasmuch as the declaration of the "preference" of Catalan as null and void should remain

b) Language training of staff

By virtue of its dual normative nature (as a basic institutional norm of the autonomous community and as a state organic law), the 2006 Statute includes diverse provisions regarding the need for proper and sufficient knowledge of the two state languages by civil servants or public servants dependent on the state who work in Catalonia in articles 33.4 (state administration staff), 102.1 and 3 (magistrates, judges and public prosecutors), 102.4 (staff serving the administration of justice and the public prosecutor's office) and 147.1.a (notaries), for which there are precedents in other statutory texts,[45] although this did not prevent all of these provisions from being contested by the People's Party.

STC 31/2010, which rejects the logic underlying the appeals that defend the right of state public servants to work while not knowing the *co-official* language in the region, endorses the constitutionality of the statutory principles of language training in that it guarantees the right to citizens' choice of language (FJ 21). Nonetheless, the language used by the CC seems to give primacy to a weak conception of the connection established by the statutory demands involving citizens' rights and public servants' duties, which are qualified in the same legal reasoning as "barely a likeness" of those rights or the "mere formalisation of a consequence" of official status or endowed with a "declarative nature as a constitutionally inherent consequence of co-official status".

Still, the most controversial aspect of this ruling is the striking assertion of the "exclusive and *excluding* competence" of the state to outline the statutory provisions, in contrast to previous pronouncements which admitted a certain normative collaboration or concurrence between the state and regional lawmakers with regard to the regulation of the linguistic aspects of the administration of justice (STC 56/1990). The current closure of competences is the outcome of another general interpretative pattern in this ruling that reassesses or absolutises the constitutional reservations in favour of specific organic laws, next to the generic citation of the state's competences over a given sector, in detriment to the expansion of the normative function of the Statute.[46]

limited to the generic definition of its official status in its statutes, the validity of the regulatory norms on the administrative uses of Catalan which do not mention Spanish in parallel is safeguarded, given that it could be interpreted that this does not imply that the use of Spanish is excluded from the functioning of the public administrations in Catalonia (an argument that STC 31/2010 admits, for example, with regard to the statutory regulation of language rights and uses in education in article 35.1 SoC).

[45] For example, article 25 of the 1981 Statute of Galicia stated that "in the resolution of tenders and state exams to fill the posts of magistrates, judges, legal secretaries, public prosecutors and all civil servants in the administration of justice, a preferential merit shall be [...] knowledge of the language of the country."

[46] According to FJ 21 of the ruling: "In turn, sections 3 and 4 of art. 33 SoC, based on the right of language choice inherent in co-official status and proclaimed in art. 33.2 SoC, aim to ensure the effectiveness of this right in exclusive realms of state competence [...]. Still, since in the case of section 3 this is a demand for whose articulation the Statute refers to "the form established in the laws", and it being obvious that this can only refer to state laws by virtue of the reservations established in articles 122.1, 124.3 and 149.1.5, 8 and 18 SC, it can easily be seen that these sections of art. 33 SoC are hardly a likeness of the section preceding them, that is, the mere formalisation of a consequence inherent in the declaration of co-official status contained in art. 6.2 SoC: the right to language choice (art. 33.1 SoC), derived from individuals' right not to be discriminated against based on language (art. 32 SoC). To be exercised before the public

Thus, the statutory provisions on language training for public servants are conceived as principles that the state lawmaker shall flesh out with a broad leeway of discretion.[47] The only exception to this excluding criterion is in relation to non-judicial and non-prosecutorial staff in the administration of justice (articles 102.4 and 103 SoC), without prejudging the normative specificity of the duty to know the language as a requirement or merit, and with the express warning by the CC that the intervention of the competent lawmaker on this matter, regional or state, shall in any case be subjected to its judgement (FJ 21, paragraph nine, end).

Finally, in relation to article 101.3 SoC, which provides for the use of both official languages in competitions for legal places in Catalonia, the CC considers this an expression of the right to language choice, and as such it is not questionable inasmuch as it affirms the competence of the organic state lawmaker to implement it. What is more, the CC adds a corrective reinterpretation which restricts its sphere of application to the "citizens of Catalonia" (FJ 50, paragraph four), which would unjustifiably exclude citizens from other autonomous communities where Catalan is also official (a criterion that STC 55/199 bore in mind in relation to administrative procedures).

c) The right to use Catalan before state constitutional and jurisdictional bodies

From the perspective of citizens' language rights, article 33.5 SC recognises the possibilities of written uses of Catalan, with legal effects, outside the strict territory where this language is official, in relations with the constitutional bodies (including the King, the Cortes Generales, the government, the Constitutional Court and the Defensor del Pueblo and the state jurisdictional bodies (the Supreme Court and the National Court), which are expressly conditioned by the provisions of the legislation, clearly referring to state laws.[48]

The CC'S line of argumentation regarding the contestation of this precept (FJ 21, paragraphs twelve to fifteen) deserves careful analysis given its strong interpretative component. First of all, the CC preventively discards as unconstitutional an interpretation of the precept – never sought by the statutory lawmaker[49] – according to which Catalan can be considered an "official"

institutions whose discipline corresponds to the state, this would require the compulsory and excluding intervention of the state lawmaker, and in particular, with regard to judges and magistrates, the organic lawmaker of judicial power". An identical argumentative scheme is applied to the more specific analysis of articles 102.1 and 147.1.a) SoC within this legal reasoning (which refers to 51 for the first precept and 90 for the second).

47 Despite the devaluation of the binding legal efficacy of the statutory orders, on this point the existence of the statutory reservation of article 3.2 SC enables us to avoid the declaration of unconstitutionality of articles 101.3 and 102 SoC that affects much of Section III SoC, "On judicial power in Catalonia" by considering that the CC is invading the sphere of organic law called for in article 122 SC.

48 This precise point was introduced based on the sole objection to the language regulation in the proposed organic law reforming the Statute approved by the Parliament of Catalonia formulated by the Consultative Council in its Opinion 269/2005.

49 In reality, the desire to extend the official status of Catalan around the state could not be attributed to the statutory precept (which strips the ruling's preventative declarations of meaning), which limits it to the specific aspect of citizens' written relationship with the bodies which, precisely because they are general or shared, directly exercise competences over Catalan

language before the state bodies not located in Catalonia proper; secondly, through a superimposition of criteria of the location of these excluded bodies (seat of authority / scope of reference of their activity), the official status of the Catalan language is territorially limited in strict terms, which contrasts with the description of Spanish as the "only shared language of Spain" (expressing the desire to favour a unique, excluding position of Spanish as the language of inter-territorial or "shared" communication); and finally, the constitutional legitimacy of the statutory precept is salvaged by wholly conditioning the content and efficacy of the proclaimed right on the provisions of the state lawmakers.[50] Therefore, even though the statutory order which requires the state to develop the multilingualism of the constitutional and jurisdictional bodies in the sense called for by the norm is maintained, the ruling reopens diverse alternatives in terms of the intensity and effects of the language uses provided for.[51]

4.2. Education

With regard to education, STC 31/2010 ruled on article 6.1 SoC, that within the framework of the definition of autochthonous language it declared that Catalan "is the language usually used for instruction and learning in education", and on the language rights contained in the first and second sections of article 35 SoC[52] (despite the fact that the appeal encompassed the entire precept, the CC excluded from its analysis the remaining sections that call for identical

speakers, and in which we can already find specific examples of these uses (communications from citizens to the Senate, or the sporadic admission of texts in Catalan by central jurisdictional bodies). What is more, we must refer to the doctrine contained in the CC's Interlocutory 27/2010 dated 25 February 2010 and cited above, which admits the legitimacy of regulatory recognition of uses with linguistic effects for citizens before administrative bodies in relation to non-official languages in a given territorial sphere. The more nuanced tone of this Interlocutory contrasts with the CC's current affirmation: "Section 5 of art. 33 SoC, in turn, would run counter to the constitution if the Statute aimed to derive from the co-official status of the Catalan language its quality as a legally valid means of communication with the public powers not located in the territory of the autonomous community of Catalonia. This condition is exclusive to Spanish" (STC 82/1986 dated 26 June 1986, FJ 2) [...]" (FJ 21, paragraph twelve).

[50] In a new example of the degradation of the binding legal efficacy of the Statute (which in the original wording of article 33.5 approved by the Parliament of Catalonia guarantees the legal effects "without the need for translation"), the CC's interpretation notes that "this legislation [the state] must be responsible for not only the way in which that right should be exercised and made effective but, even before that, must duly define its content and scope. In this sense, the existence or not of legal efficacy of the texts presented in Catalan to these bodies and, if applicable, the degree of this legal efficacy must be established with full freedom within the constitutional limits (article 3.1 SC) by the competent state lawmaker" (FJ 21, paragraph fourteen).

[51] In this sense, we should note the risk of a specificity of the statutory order similar to what has ended up happening with the recognition urged by the state government of "official uses" before EU institutions and bodies which, in reality, does not imply an official use because the translation of the text into Spanish must be attached, which the state has subsequently ignored.

[52] Article 35 SOC: "1. Everyone has the right to receive education in Catalan, in accordance with the provisions of this Statute. Catalan should be regularly used as the language of instruction and learning in university and non-university education. 2. Students have the right to receive education in Catalan in non-university education. They also have the right and duty to have sufficient oral and written knowledge of Catalan and Spanish by the time they finish their compulsory education, regardless of their habitual language when entering the educational system. Education in Catalan and Spanish must have an appropriate presence in the curricula."

treatment of both languages, including the third section, which establishes students' right "not to be separated into different centres or class groups based on their habitual language", as a cornerstone of the educational language system currently in place in Catalonia).

The ruling's argumentation on this point is conditioned by the prior conceptualisation of the principles of *autochthonous language* and *co-official status* (FJ 14), which are outlined in an initial preventative pronouncement on article 6.1 SoC, according to which the normality of the use of Catalan is considered legitimate as long as it is "equally declared for Spanish" and does not violate the ban on excluding Spanish as the language of instruction.[53]

The more specific argumentation deployed by the CC with regard to article 35 SoC does not question the two cornerstones of the doctrine formulated by STC 337/1994 – which declared the constitutional conformity of the educational language model within the 1983 LNL: the first signals the constitution's lack of a value or fundamental right that equates the right to receive instruction in a given language, based on the students' or his parents' choice; and the second entails the autonomous community's competence – within the framework of the basic state legislation – to determine the language model from the standpoint of the language of instruction, without prejudice to the state's competence to guarantee respect for language rights in the sphere of education.[54]

In fact, the broad underpinning of FJ 24 in the ruling on this point – which contrasts with a certain apodictic nature of other parts of the document – summarises the argumentative items in STC 337/1994, which are now generalised "to the entire educational process" (FJ 24, paragraphs six and seven), specifically:

> The constitutional legitimacy of education in which the language of teaching is the autochthonous language of an autonomous community.
>
> The constitutional right to know Catalan does not lead to a purported right to receive education exclusively in this language.
>
> The state has the authority to ensure respect for language rights in the sphere of education and in particular the right "to receive education in the official language of the state" (6/1982, FJ 10), "since it should not be forgotten that the constitutional duty to know Spanish (art. 3.1 SC) presupposes the satisfaction of the citizens' right to know it through the education received in elementary school".

[53] The core issue of constitutionality analysed by the CC in relation to article 35.1 and 2 SoC is summarised in these terms: "The problem of constitutionality, therefore, lies in determining whether the expressions that have just been transcribed imply, as a necessary consequence, denying Spanish its condition as a language of instruction." (FJ 24, paragraph two, end)

[54] In this sense, we should welcome the pronouncement of STC 31/2010 in relation to education, which departs from the theses upheld by the appellants (whose priority objective was to question the educational language model in force in Catalonia), which are upheld, however, by four signatory magistrates of the particular votes which unsuccessfully tried to force a change in the CC's doctrine on this matter.

> From the content of the fundamental right to education, in particular article 27, sections 2, 5 and 7, we cannot glean the right to receive education in only one of the official languages.
>
> It is the competence of the public powers, of the state through the basic legislation and of the autonomous communities as part of their educational competences, to determine the curriculum and organise its implementation at schools, such that the right to education "does not mean that the activity provided by the public powers in this field can be conditioned by the free choice of those interested in the language of teaching. And the powers – the state and the autonomous community – are therefore authorised to determine the use of the two languages which are co-official in a given autonomous community as languages of communication in education in accordance with the division of competences on educational matters."
>
> The autonomous community may organise the use of Catalan and Spanish as the languages of instruction in education combining the objectives of linguistic normalisation and the right to education "in relation to the different areas of required knowledge at the different educational levels to achieve a result proportional to these purposes."
>
> The right to language choice in the sphere of education must be modulated: both languages should be both taught and should be the languages of instruction, and it should be perfectly "legitimate that Catalan, in view of the objective of linguistic normalisation in Catalonia, is the centre of gravity of this model of bilingualism", even though with the ineluctable limit that "this does not determine the exclusion of Spanish as a language of instruction so that its knowledge and use is guaranteed in the territory of the autonomous community".

Nonetheless, STC 31/2010 adds to all the above several specifications whose meaning is somewhat unclear in terms of the more or less rhetorical or modulating scope of the decisions of the public powers in this sphere, as a constitutionally appropriate interpretation of the prescriptions of article 35 SoC, "in the sense that they do not impede the free and effective exercise of the right to receive education in Spanish as the language of instruction and learning in education" (FJ 24, paragraph eight) or the "equal use of Spanish" or the very "existence of the right to education in Spanish" (FJ 24, paragraph eight).[55] In

[55] In the words of the CC: "It is true that section 1 of article 35 SoC literally omits any reference to Spanish as a language of instruction. However, it cannot be understood that its silence on a circumstance that is imperative based on the constitutional model of bilingualism reflects a deliberate intention to exclude it given that the statutory precept is limited to stating the duty to use Catalan "normally as the language of instruction and learning in university and non-university education", but not as the only language, therefore impeding – as it could not – the equal use of Spanish. In consequence, the second point of article 35.1 SoC is not unconstitutional if interpreted in the sense that the mention of Catalan does not deprive Spanish of the status of language of instruction and learning in education. Along the same lines, the sole recognition of a right to receive education in Catalan (first point of section 1 of art. 35 SoC) cannot be interpreted as expressing an inadmissible legislative desire for exception, so the constitutionally admissible interpretation is the one that leads to the existence of the right to instruction in Spanish. The same holds true for the first point of section 2 of art. 35 SoC." (FJ 24, paragraph seven).

the context of this ruling, the intention inspiring these notes regarding guaranteeing the position of Spanish in this sphere as well seems clear, based on article 3.1 SC.[56] Still, the CC does not extract specific consequences of the limits formulated on the non-exclusion of Spanish or the principle of proportionality in relation to the different purposes present in the sphere of education, so the autonomous community bodies retain their capacity to define the educational language model from the perspective of the language of instruction.

4.3. Socioeconomic sphere

The two statutory linguistic prescriptions related to the socioeconomic sphere, which establish the rights of consumers and users (article 34 SoC[57]) and the guiding principle of encouraging labelling in Catalan (article 50.4 SoC[58]), were questioned by the People's Party and the Public Defender based on reasoning that the CC itself criticised for its "generality" which is based on a prejudice – denied by comparative law and by the existing regulations statewide with regard to the use of Spanish – that runs contrary to the linguistic intervention of the public powers in these spheres (Milian, 2010: 141 and following).

With regard to article 34 SoC, in FJ 22 of the ruling the right to linguistic availability by companies, private entities and establishments open to the public is viewed as a "necessary consequence of the right to language choice, and specifically, of users' and consumers' right to be served in the official language they choose." Therefore, according to the CC, this abstract proclamation does not violate the precepts of the fundamental rights regarding the free development of the personality, the freedom of movement of people and goods or the freedom of enterprise (articles 10, 19 and 38 SC), which clearly admit limits, nor the guarantee of the unity of the market (article 139.2 SC). Despite this, the ruling does not only forward the implementation of this duty by the competent lawmaker to possible constitutional judgement but it also adds a preventative declaration – without grounding it upon any specific constitutional precept – by stating that

> *this cannot entail the imposition on these, on their owner or personnel, of individual obligations of use of either of the two official languages generally, immediately and directly in private relations, since the right to be served in any of these languages can only be*

[56] In fact, within the framework of comparative law, from a language's official status we can glean the public powers' obligation to teach the official languages via the educational system, but without this predetermining the use of the language as the language of instruction, an argument which will prevent abusive consequences from being drawing this sphere from article 3.1 SC. Nor from international law can receiving education in the child's habitual language be interpreted as a human right (Pons, 2006: 74-77), even though the decisions of the public powers can be subjected to certain limits.

[57] Article 34 SoC: "Everyone has the right to be served orally and in writing in the official language that they choose as the users or consumers of goods, products and services. Entities, companies and establishments open to the public in Catalonia are subjected to the duty of linguistic availability in the terms stipulated by law."

[58] Article 50.4 SoC: "The public powers must encourage the information appearing on labels, packaging and user instructions of products distributed in Catalonia to also appear in Catalan."

demanded in relations between the public powers and citizens (FJ 22, paragraph three),

which does not, however, exclude a relatively broad margin of intervention for the regional lawmakers to specify the legal techniques used to guarantee the rights to oral and written service to citizens in their capacity as consumers and users in the two official languages.

With regard to the regulation on labelling contained in article 50.4 SoC, the CC has no objections if the precept is reconducted towards an order to encourage or promote the use of Spanish. Likewise, the argumentation in the ruling inspires two observations: first, because of the debatable nature of the statement that deems it "a matter outside the scope of definition of the legal co-official status of a regional language" as "a commitment to promote linguistic normalisation" (STC 69/1988, dated 19 April, FJ 3), which is not an obstacle to ratifying the non-exclusion of Spanish as a limit (which is already guaranteed by the adverb also introduced in the precept by the General Courts); and secondly, by its preventative nature in anticipating limits to the legal implementation of the statutory precept, in this case from the standpoint of competences, without mentioning article 143 SoC.

5. Final reflections

The reading – and therefore the necessary rereading – of the interpretative arguments and pronouncements of STC 31/2010 lead us to final reflections on its influence on the objectives of the statutory reform on language matters. This overall or transversal reading of the effects of the ruling can be approached from the perspective of self-governance on language matters, which, though partially concealed within its legal reasoning, becomes the result of the two general kinds of constitutional limits – substantive and competence-based – that can be identified.

With regard to the first kind of limit, a detailed analysis of the arguments and interpretative declarations made on the statutory concepts and category (on autochthonous language, official status, language rights, language training of civil servants and public servants and linguistic availability in companies and establishments open to the public), even though in many cases they point to a diminishment of the value and binding regulatory efficacy of the Statute – which is especially objectionable in language matters given the reservation contained in article 4.3 SC – they do not substantially alter the material bases upon which the language system currently in force in Catalonia is grounded, and it enables the full constitutionality of Law 1/1998 dated 7 January 1998 on language policy, as well as the decrees that implement it and the subsequent sectorial norms that are grounded upon it, to be maintained.

With regard to the competence-based limits, we should stress that the ruling does not directly affect article 143 SoC, which today attributes an explicit competence-based grounding of the Generalitat's intervention in relation to autochthonous language, which can be connected to other regional sectorial spheres (culture, education, immigration, public function, consumer affairs, etc.). Still, from this perspective as well we should consign the effects of the

ruling's weakening on the position of the Statute as a norm delimiting competences, which is translated into the deactivation of the historical rights entailed in article 5 SoC, namely "the recognition of a unique position of the Generalitat with regard to [...] language" as an autonomous underpinning of self-governance or a generator of added competences (FJ 10); the restrictive interpretation of the content of the exclusive competences contained in article 110 SoC (FJ 59); the generic and unconditioned references to the state's sectorial competences; and the reassessment or virtual absolutisation of the constitutional reservations in favour of specific state laws.

Consequently, in the vein of some critical readings that stress several *concealed rulings* within STC 31/2010, identifying in it several non-express lines of argumentation that condition the often apodictic pronouncements on the constitutionality of the statutory precepts and their future implementation, on language matters we can identify a twofold underpinning: first, the mistrust shown towards the regional lawmaker, which is translated into the constant limiting interpretations and admonitions on possible regulatory implementations of the statutory linguistic prescriptions; and secondly, the deferential treatment of the organic or ordinary state lawmaker, which is guaranteed broad room to implement the linguistic orders that affect it, which detracts from the effectiveness of the statutory reform as a mechanism for driving the still-insufficient adaptation of the state administration in Catalonia to the system of double official status and to make headway towards the respect for multilingualism statewide.

The final assessment of the effects of STC 31/2010 should nonetheless reveal its partial nature – an adjective which we are not trying to link to the composition of the CC that issued it, altered by recusals and a lack of substitutions or replacements of many of the magistrates – which, without prejudice to the breadth of the contestation, hinders us from viewing it as a global, definitive pronouncement on the constitutional limits of the language model for a variety of reasons: its necessary insertion and contextualisation in the previous constitutional jurisprudence; the ambiguity of its abstract arguments in which the logic that inspired the Catalan linguistic legislation in relation to the evolution in the process of normalisation has been ignored; the role of "stone guest" reserved for the Generalitat, by pivoting the argumentation on the appellants' desire to contest the Statute; and finally, the inherent limits on jurisdictional intervention in the definition of the language model which, as an aspect intrinsically linked to the model of state, must ultimately be the outcome of a political pact or consensus.

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Annexe

Articles or sections	General Courts (PSOE amendments)	Public Defender appeals	People's Party appeals	STC 31/2010
5	(x)	(x)	(x)	Interpretative Part containing provisions
6.1	x	x	x	Partial nullity
6.2	x	x	x	Interpretative Part containing provisions
6.3	x		x	Not analysed Lacks grounding for contestation
6.5	x		x	Not analysed Lacks grounding for contestation

Articles or sections	General Courts (PSOE amendments)	Public Defender appeals	People's Party appeals	STC 31/2010
11	(x)		x	Interpretative (not linguistic) No to part containing provisions
32	x			
33.1			x	Interpretative (not linguistic) No to part containing provisions
33.2			x	Interpretative No to part containing provisions
33.3	x		x	Interpretative No to part containing provisions
33.4			x	Interpretative No to part containing provisions
33.5		x	x	Interpretative Provisions
34		x	x	Interpretative Provisions
35.1			x	Interpretative Provisions
35.2			x	Interpretative Provisions
36.1			x	Interpretative (not linguistic) No to part containing provisions
36.2			x	Interpretative (not linguistic) No to part containing provisions
50.4	x		x	Declaration of constitutionality

Articles or sections	General Courts (PSOE amendments)	Public Defender appeals	People's Party appeals	STC 31/2010
50.5			x	Interpretative Part containing provisions
101.3			x	Interpretative No to part containing provisions
102.1		x	x	Interpretative No to part containing provisions
102.3		x	x	Reinterpreted No to part containing provisions
102.4		x	x	Interpretative No to part containing provisions
147.1.a		x	x	Interpretative No to part containing provisions