

## Shouting against the silencing. A brief introduction to the minority struggles from the Basque Country.

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**Abstract:** Our research area consists in the struggles suffered by the Basque minority, which were and are caused by the Spanish and French states. We claim that from the point of view of post-national human rights law, the threats experienced throughout history were aimed to destroy one of the main characteristics of the Basques as a minority, the Euskara (the Basque language). Besides, we perceive a change in the roles of the Spanish and French state. That is to say, in the past all the struggles that Basques suffered were caused by Franco's dictatorship, whereas nowadays Basque Country and Basque language enjoy a constitutional protection in Spain. While in France nowadays this constitutional protection is weak. Further, we argue that these conflicts related to language and minority rights that the Basques had been (and are) suffering, imply the failure to translate human rights into practice. So that there is a gap between the post-national human rights scope of protection and human rights principles in action.

**Keywords:** Basque country; Spain; France; Minority; Human rights

## Gritando contra o silenciamento: uma breve introdução à minoria luta do país basco

**Resumo:** Nossa área de pesquisa consiste nas lutas sofridas pela minoria basca que foram e são causadas pelos estados espanhol e francês. Nós reivindicamos que, do ponto de vista do direito de pós-nacional de direitos humanos, as ameaças vividas ao longo da história foram destinadas a destruir uma das principais características dos bascos como uma minoria, o Euskara (língua basca). Além disso, percebemos uma mudança nos papéis dos estados espanhol e francês. Pode-se dizer que, no passado, todas as lutas sofridas pelos bascos foram causadas pela Ditadura de Franco, ao passo que hoje em dia o país Basco e a língua basca desfrutam de uma proteção constitucional na Espanha, enquanto na França essa mesma proteção é fraca. Também, defendemos que estes conflitos relacionados à língua e aos direitos das minorias que os bascos tenham sofrido, e estão sofrendo, implicam na ausência de tradução dos direitos humanos em prática de modo que há uma lacuna entre o âmbito de pós-nacional de direitos humanos e dos princípios de proteção dos direitos humanos em ação.

**Palavras-chave:** País Basco; Espanha; França; Minoria; Direitos Humanos.

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According to Ken Hale: *“as language disappears, cultures die. The world becomes inherently a less interesting place, but we also sacrifice raw knowledge and the intellectual achievements of millennia”*<sup>4</sup>.

Language is intrinsic to culture; it has an important social function and it is linked to individual and collective identity. For this reason, it is important to keep each culture’s language alive. Nowadays, we live under a cultural and linguistic diversity. In some states, we even talk of multilingual societies. In the concept of modern nation-states which governs nowadays most of the European countries, the maintenance of the languages of the various ethnic and cultural groups has been - and still is - an important issue. For us, three Basque women, the loss of language means the loss of identity.

During the historical process of creating the French and Spanish nation-states, both governments have tried to suppress the Basque language and its identity. In this paper we present the Basque cultural minority<sup>5</sup> from the point of view of post-national human rights law<sup>6</sup> within a historical and constitutional analysis of the conflict. We understand the human rights regime as an idea of world law that should be effectively reflected in each legal system (understood as the singular legal communication units within a regime). We purpose this view of human rights as a global law because of these two reasons: on the one hand, their universality is strongly stated in the legal instruments related to human rights; and on the other hand, the customary international law status that the international Bill of Rights has<sup>7</sup>. Thus, there should be a segmental differentiation between the human rights regime and the individual legal systems in order to effectively translate human rights principles into practice.

Further, our aim is to describe the threats to the Basque language as the central issue to analyses some of the paradigms of the struggles suffered by the Basques. In fact, these threats come from both sides of the border: the Spanish territory and the French side. Therefore, in the following lines we will distinguish between the threats coming from each side. From the point of view of the Spanish territory, we argue that although there have been many attempts to eliminate the Basque culture during Franco’s regime, Basque language has survived and that it is constitutionally protected nowadays<sup>8</sup>. However, from the perspective of the French side, the scope of protection is still weak. Nevertheless, the European supra-national scope provides the appropriate mechanisms to protect the Basque language. Besides, we claim that the reason of all these struggles is the inability to effectively translate human rights into practice. In order to do the above mentioned, we need, first, to identify what the Basque country and Basque language are.

## 2. THE BASQUE MINORITY

Basque Country is defined as the country of the Basque people. It comprises the Autonomous

<sup>4</sup> Ken Hale, Massachusetts Institute of Technology, quoted in Friedman T.L., *The Lexus and the Olive Tree: understanding globalization*. 2000. P. 291.

<sup>5</sup> According to the characteristics pointed out by J.R. Feagin, Basques constitute minority because it has been a historically excluded group, with their own collective identity, culture and language. See Feagin J.R. *“Racial and Ethnic Relations”* (2nd ed.). Prentice-Hall. 1984. P. 10.

<sup>6</sup> Supra-national as a way to describe human rights in the European level, and inter-national as a level over the European. Both stages form the post-national level which is superior to the Spanish domestic scope. As described by Krisch N. *“Chapter 1: Post-national Law in search of a structure”*. *“Beyond Constitutionalism: the pluralist structure of postnational law”*. Ed. Loughlin M., McCormick J.P. and Walker N.. Oxford University Press. 2010.

<sup>7</sup> International Bill of Rights is making reference to the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights; and International Covenant on Economic, Social and Cultural Rights.

<sup>8</sup> Spain maintains maintain an official notion of minority languages. See Zeb Mughal M.A., *“Spain”*. *Native Peoples of the World: An Encyclopedia of Groups, Cultures, and Contemporary Issues*. Steven L. Denver (ed.) Vol. 3. Armonk, NY: M .E. Sharpe. 2012. Pp. 674-675.

Communities of the Basque Country and Navarra (located in Spain), and the Basque country in France. This region is homeland to the Basque people, their culture and traditions, and most importantly for us, their language (*Euskara*).

Basque language (*Euskara*) is the ancestral language of the Basque people. It is believed to be the only surviving pre-Indo-European language in Western Europe. Moreover, a standard *Euskara* has been created in the late 1960s. This *Euskara Batua* (Unified Basque)<sup>9</sup> was created in order to be understood and used by all Basque speakers in formal situations. In addition to that, traditionally there are five main Basque dialects, three in Spain and two in France.

Indeed, the Basque Country and *Euskara* are divided between two countries. French nation-state has a long trajectory of trying the complete cultural absorption of minorities (including the Basque minority). Spain, however has tried to accept, in a higher or lower degree, some autonomy to the Basque minority. For instance, nowadays the Autonomous Community of Basque Country in Spain have some cultural and political autonomy, as an effect of some constitutional devolution. However, even in these “privileged” Basque regions, the implementation of the linguistic policies depend mostly on the will of the different political parties in power and administrative levels.

Concerning the Basque language in France, if we refer to the UNESCO’s Interactive Atlas of the World’s Languages in Danger<sup>10</sup>, we notice that Basque is among the vulnerable ones<sup>11</sup>.

In the following lines, we are going to point out some of the threats and struggles that the Basque minority has suffered.

### 3. FRANCO’S REPRESSION TO THE BASQUE MINORITY

Franco’s regime in the Basque Country was not only shown in the most painful expressions (torture, jail, misery), but in many other ways such as the banning of the Basque language, the trampling of the Basque flag, the ridiculing of the Basque flute (*Txistu*), the abolishment of any printing except from the ones in Latin or Spanish language; and the consecration of the fascist teaching.

“*Let’s breath* - said Oteiza (1908-2003)<sup>12</sup> - *because the Basque soul breaths in a different way*”. Without the Basque people (the authors and protagonists of their history) there is no political project. And in order the “active subject” to have vital conscience of his/her transcendency, this subject needed to be in possession of the peculiarities and signs of identity that marked him/her as such. Without Basque language, without territory and without an appropriate teaching, there was not a Basque project.

Between these signs of identity, in the Basque case, there was one that played and still plays the main role: the Basque language. “Without Basque language there is no Basque community”. This maxim does not have a concrete special reference; it is an idea that does not obey to a concrete approach, but to a much deeper issue about the existential collective meaning of a whole country.

<sup>9</sup> Our own translation.

<sup>10</sup> <http://www.unesco.org/culture/languages-atlas/index.php> (last checked in 20 th February 2015).

<sup>11</sup> In addition, Article 1 of the 1992 UN Declaration on minority rights refers to minorities as based on national or ethnic, cultural, religious and linguistic identity, and provides that States should protect their existence. <http://www.ohchr.org/EN/Issues/Minorities/Pages/internationallaw.aspx> (last checked on the 20th of February 2015).

<sup>12</sup> One of the maximum exponents of the Basque School of Sculpture in XX century.

#### 4. THE MAINTENANCE AS A MAIN VALUE

After the above stated, one question can come repeatedly to one's mind is how the Basque language has been able to maintain itself as a main value within the Basque collective identity, after having so many difficulties and troubles to survive. The counter-dictatorial movements in Franco's regime and the legal movements in democracy, as well as the policies of Basque Institutions and the engaged artists and jesuits, have been important tools for the Basque society in order to achieve this goal.

We would say that Franco's policies fail their aim of eradicating the Basque language. The Basque language is *THE value* within the Basque collective identity and the fact of seeing it threatened, wakes us up. The collective identity means group consciousness and when the Basque people started to be aware about its threats, when we realized what was happening in our own territory, in our home, to our identity, to our people... the recovery started; that was the turning point. The threats and the necessity of keeping the signs that composed our stolen identity, made us become the strongest defenders of our culture.

I (L. Ortuoste) remember, clearly, how my grandmother described me the situation at that moment. She was born in a small city of Bizkaia, called Markina, where the only language used was the Basque language. She was 14 years old in 1939 and she remembered wearing a signal in the school because she had been caught speaking in Basque language. She used to tell me: "*But, what did they expect from me? I did not know any other language; I did not even understand why I was being punished. I could not understand all their explanations in Spanish*".

Iñaki Anasagasti (a Basque politician from PNV political party, Basque nationalist party) stated in an interview on the radio, how once a nun knocked on the door of his home and asked if his aunt was there. The one who opened the door was his grandmother and the nun was asking in Spanish. His grandmother got so nervous, because of the impotence of not being able to communicate in Spanish, that said something like "*No, nothing Frantziska...nothing*"- trying to say that she was not there. And she abruptly, closed the door.

Itziar Aizpurua, member of the former HB political party (left-wing Basque independent party) and former member of E.T.A. terrorist organization (this is the reason because of which she spent 8 years in jail), reported in an interview how important was for her to speak in Basque; so important, that when she was a 13-year-old girl, she used to move during the weekends to another town to be able to speak Basque with her friends. In her hometown, she had no friends who spoke Basque. She also explained how she entered E.T.A. without realizing she was a member of that organization, since at the beginning this group was just an underground association that defended the Basque culture in the clandestinity. Due to her enthusiasm and love to the Basque language and culture, she started taking part in the activities of E.T.A. at that time. "One day, I realized I was part of this group; but nobody asked me if I wanted to enter or not, it came in a spontaneous way"<sup>13</sup>. Later, E.T.A. became a terrorist group.

Many people still remember how, during Franco's dictatorship, in the Spanish state, there were exhibited some cartels where it was written "*It is forbidden to spit and speak in Basque language*". It was not appropriate for a "*good Christian*" not to do it in Spanish language. But far away from eradicating our language, Basque people got up from their ashes with the same strength that people from Gernika did, in 1937, after the bombing against civil population by the German Nazi aircraft (which we could see in the reproduction of the Picasso painting).

<sup>13</sup> Aizpurua I. "Lekuko Hitzak". In Euskadi ta Askatasuna / Euskal Herria y la libertad (Lehena ed. v. 2, p. 333). Tafalla: Txalaparta.1993.

## 5. A COMPARATIVE CONSTITUTIONAL DIMENSION OF THE PROTECTION OF THE BASQUE LANGUAGE IN SPAIN AND FRANCE NOWADAYS

According to the Article 3 of the Spanish Constitution of 1978, “1) Castilian (Spanish) is the official Spanish language of the State. All Spaniards have the duty to know it and the right to use it. 2) The other Spanish languages shall also be official in the respective Self-governing Communities in accordance with their Statutes. 3) The wealth of the different linguistic forms in Spain is a cultural heritage which shall be especially respected and protected<sup>14</sup>.”

Indeed, Spain is a decentralised state divided into seventeen Autonomous Communities with legislative and executive competencies shared between the two levels of government. As it appears in the Article 3, the protection of minority languages has been constitutionalised.

Following the analysis of Xabier Arzoz: “The constitutional linguistic model has two basic components. The first is unilingualism at the national (federal) level: Castilian is the official language of Spain. Recognition indicates that the characteristics of the institutions continues to operate only in one language. The second component of Spain’s linguistic model is formal bilingualism at the subnational level. Regional or minority languages have been given official status (they are designated as “co-official languages”) within their geographical areas, in addition to the official language of the state.”<sup>15</sup> This implies that the protection of Basque language must be provided by the Basque-speaking Autonomous Communities. In addition, we should add that the minority language has a territorial character. The government cannot restrict the power of regional authorities to legislate on minority language rights.

Xavier Arzoz adds that “the decentralisation of authority has created a legal and institutional framework in which regional or minority languages and cultures can flourish. However their potential to do so is a highly conditional one. It depends on the extent to which local-regional authorities and speakers share the view about the intrinsic value of their vernacular language. If such a common understanding breaks down, then the significance of institutional arrangements is reduced to an empty framework of protection.”<sup>16</sup> Indeed, Autonomous authorities have tended to reduce this minorities rights in Navarre and Valencia.

As the Statute of Autonomy of the Basque Autonomous Community establishes the co-officialdom of *Euskara*, the Statute of Navarre establishes the language policy in this region. This Statute establishes that the official language of Navarre is Spanish but grants co-official status to the *Euskara* in the Basque-speaking areas of northern Navarre. This means that *Euskara* has official status in the Basque Autonomous Community, but only partially in Navarre.

Regarding the other side of the Basque territory, the situation in France is different. As the Article 2 of the Constitution of 1958 states that “the language of the Republic shall be French. The national emblem shall be the blue, white and red tricolour flag. The national anthem shall be *La Marseillaise*. The maxim of the Republic shall be *Liberty, Equality, Fraternity*. The principle of the Republic shall be: government of the people,

<sup>14</sup> [http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist\\_Normas/Norm/const\\_espa\\_texto\\_ingles\\_0.pdf](http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/const_espa_texto_ingles_0.pdf) (Spanish Constitution of 1978 in English version).

<sup>15</sup> Arzoz X., “Legal mobilisation at the subnational level: the case of language rights in the Spanish Autonomous Community of Navarre, in *Rights and Courts in Pursuit of Social Change – Legal Mobilisation in the Multi-Level European System*”, edited by Dia Anagnostou. 2014. P. 55.

<sup>16</sup> Arzoz X., “Legal mobilisation at the subnational level: the case of language rights in the Spanish Autonomous Community of Navarre, in *Rights and Courts in Pursuit of Social Change – Legal Mobilisation in the Multi-Level European System*”, edited by Dia Anagnostou. 2014. P. 57.

by the people and for the people.”<sup>17</sup>

The Constitution of France doesn't allow any doubt: the only official language is the French. According to Izquierdo<sup>18</sup>, during the XIX century and the beginning of the XX century, France tries to ensure its domination using the republican ideology. The Enlightenment movement strongly brought the idea of a “Language-Nation” which includes the distinction between civilised and barbarian languages (which already started during the Renaissance<sup>19</sup>). The best tool of unification of the nation is the language and the French Revolution of 1789 will identify the French as the language of the nation. This partly explains the non-protection of the minority languages in the French Constitution.

Nowadays, the situation of *Euskara* in France is vulnerable according to UNESCO. For instance, the different administrative obstacles enforced towards the Basque language schooling shows it. Another example can be that in November 2013, France decided not to ratify the European Charter for Regional or Minority Languages.

On the contrary, Spain has ratified both the Framework Convention on National Minorities and the Charter for Regional or Minority Languages. This allows the European Commission for Regional or Minority Languages to give some recommendations to Spain. In the recommendations of 2004, for example, it was suggested the suppression of the administrative linguistic divides of Navarre. Indeed, it is considered an obstacle to the normal use of Basque language and a discrimination against Basque speakers.

The European ruling has a strong importance nowadays in the protection of minority languages. We are going to focus, in this second part, in Council of Europe's tools.

However, we must add that in 2008, the article 75-1 introduced an attempt to protect the linguistic minorities in the French Constitution: “*Regional languages are part of France's heritage.*”

Although hope was created by this constitutional amendment of 2008, where a formal recognition to the existence of regional languages was created, it was only symbolic, as the Constitutional Court said in 2011<sup>20</sup>. Indeed, the French Constitutional Court interpreted this Article 75-1 as not forming a rights which could be invoked by individuals to challenge the constitutionality of the existing legislative arrangements for the teaching of regional languages.

Following the analysis of these legal provisions of the French Constitution, we can see that one part of the Basque Country (*Iparralde*<sup>21</sup>), is governed by an unitarian and centralised organisation of the French State, which is committed to the protection of Human Rights. After watching how *Iparralde* is governed, we need to see how *Hegoalde*<sup>22</sup> is organised.

<sup>17</sup> <http://www2.assemblee-nationale.fr/langues/welcome-to-the-english-website-of-the-french-national-assembly#Title1> (Constitution of France of 1958 in English version).

<sup>18</sup> Izquierdo, “Le Pays Basque de France. La difficile maturation d'un sentiment nationaliste” (1998), quoted in Patrick Cassan, *Le pouvoir français et la question basque* (1981-1993).

<sup>19</sup> Bidart, *La Révolution Française et la question linguistique*” (1991), quoted in Patrick Cassan, *Le pouvoir français et la question basque* (1981-1993).

<sup>20</sup> Decision of the Conseil constitutionnel no 2011-130, QPC of 20 May 2011, Mme Cécile L et autres.

<sup>21</sup> (Our own translation) Northern Basque Country, i.e. three regions in France.

<sup>22</sup> (Our own translation) Southern Basque Country, i.e. three regions in the Autonomous Community of Basque Country and the region of Navarra in the Autonomous Community of Navarra.

## 6. THE EUROPEAN DIMENSION OF THE PROTECTION FOR THE BASQUE LANGUAGE

Two main tools have been created by the Council of Europe in order to protect the minority languages: the Framework Convention on National Minorities (FCNM) and the Charter for Regional or Minority Languages (CRML). Both texts entered into force in 1998 and at the latest count on May 2013, 25 states had ratified the CRML, and 39 states had ratified the FCNM.

The states who have ratified those conventions must submit periodical state reports on their application to the committee of experts that were set up under each of the two conventions. However, these expert committees adopt a dynamic role. Here the question to ask will be why France does not have adopted neither of these two instruments.

According to Bruno de Witte, the expansion of minority protection in France has been entirely due to successful political mobilisation, facing the counter-mobilisation of the courts, who wanted to protect the unilingual character of the French State. Each time a socialist government came to power, there was a concern of giving better recognition to the regional minorities of France, but such plans were “*thwarted by the intervention of judicial bodies which enforced traditional Jacobin-republican ideology*”<sup>23</sup>. The Charter was signed in May 1999, but the right-wing opposition challenged the ratification law before the *Conseil Constitutionnel*. This constitutional court declared that the ratification of the ECRML would be unconstitutional. Thus, the Charter was never ratified. Concerning the FCNM, it was not even signed by France, after the opinion of the *Conseil d’Etat* acting in its capacity of legal advisor to the government. Indeed, this court said that the ratification of Framework Convention would also be contrary to the Constitution.

As is clearly appears, the courts in France “*have been successfully mobilised by the defenders of French unity and uniformity to stop at least some of the reforms designed to enhance the legal status of France’s regional communities and languages*”<sup>24</sup>. Thus, the potential impact of the new European minority tools was not felt in France. Here, we see that the problem of the protection of *Euskara* is the filter of the State.

This shows that the nation-state’s constitutions are not enough to protect the rights. I clearly see that nation-state is not “the” principle but “a” principle. Maybe a solution will be to look beyond the nation-state and ask protection in supranational Constitution. Europe is an example of this notion.

Linking it to the issue of the Basque language, an optimistic (and maybe unreal) vision will be to say that this supranational constitutionalism would allow, in the future, to avoid the filter of the State in order to implement protective policies towards minority languages (specially in France).

## 7. A HUMAN RIGHTS-RELATED CONCLUSION.

The Basque language is a main value within the Basque identity; indeed, we dare to say that it is *THE value*. It is the “*dasein*” as Heidegger would state in *Being and Time*, “*being in the life, by means of the life*”, “*being in the language, by means of the language*”. And following Wittgenstein, we would claim that “*the limits of our language are the limits of our world*”. The Basque language is not just a language for the Basque people. It is a way of being, feeling, breathing and living. It is the essence of the Basque collective identity.

<sup>23</sup> De Witte B., “Linguistic Minorities in Wester Europe: Expansion of Rights Without (Much) Litigation?”, in *Rights and Courts in Pursuit of Social Change – Legal mobilisation in the multi-level European system*, edited by Dia Anagnostou. 2014. P. 40.

<sup>24</sup> De Witte B., “Linguistic Minorities in Wester Europe: Expansion of Rights Without (Much) Litigation?”, in *Rights and Courts in Pursuit of Social Change – Legal mobilisation in the multi-level European system*, edited by Dia Anagnostou. 2014. P. 42.

Identity means consciousness and intellectual effort within the legal philosophical and sociological discourse. And as Shopenhauer once said *"all effort or aspiration is born from a necessity, from a dissatisfaction with the present status and it is, therefore, a pain while is not being satisfied"*<sup>25</sup>. This pain, this dissatisfaction, this necessity was very present for the Basque people during Franco's regime; all the repression of the dictatorship were threats to our identity and the Basque people fought with all the weapons they had to keep it and even develop it through the culture and language.

We have seen that as Democracy and human rights transformed the Spanish society these struggles decrease in an outstanding way. The very fact of enjoying the constitutional protection for the Basque territory, language, culture and in last resort, collective identity is an important event to bear in mind. However, not all the glitter is gold and there are still some conflicts in Spain related to the Basque case, which we hope to address in future articles.

Nowadays we turn our gaze to the conflicts concerning the French state. The weak protection that the French state provides can be explained as a collision between the post-national scope of minorities' human rights and the French domestic law. The sovereignty of the French state is invading the transformative sovereignty of human rights<sup>26</sup>. That is to say, this multiple legal pluralism living in the same field is causing a conflict of laws. However, as we have seen in the cases above stated, the European scope provides a protection mechanism to overcome this problematic. But is it enough?

This has been a brief introduction to some of the struggles lived in the Basque Country as a minority.

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<sup>25</sup> Vidarte J. & Rampérez J. "Filosofías del siglo XX". (Vol. 1). Vallehermoso-Madrid: Edición Síntesis. 2008.

<sup>26</sup> See Levy D. and Sznajder N. "Sovereignty transformed: a sociology of human rights". *The British Journal of Sociology*. Volume 57. Issue 4. 2006.



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