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THE POWER OF INADEQUATE LANGUAGE REPRESENTATION IN LEGAL PROCEDURES: MONOLINGUALISM AGAINST HUMAN RIGHTS

Abstract: International instruments have long recognized the power of languages and established measures to mitigate and prevent the harm of language deprivation. Indeed, linguistic rights have increasingly been recognized as human rights. In a number of contexts, the effective realization of the most basic linguistic rights depends on the translation from a minority to a dominant language. Legal proceedings are an example, and the European Convention on Human Rights (Article 6) enshrines the right to interpretation and translation for those who do not speak or understand the language of the proceedings. However, monolingual ideologies still loom large on societies, resulting in a number of inadequacies that deprive the speakers of languages socially classified as minor of the necessary resources to enjoy their rights. This contribution will tackle two different contexts, Kosovo, and the Valencian country. Despite the legal obligation to avoid discrimination of speakers of non-dominant languages, judiciary practices discourage and endanger the maintenance and development of the regional and minority languages in both settings. This chapter addresses the lack of maturity of judiciary translation policies focusing on the accuracy, quality, and availability of translation, or lack thereof. In that way, we will show that from translator training to quality standards, societies’ preparedness vis-à-vis their increasing diversity requires improvement.

Keywords: language representation, legal procedures, monolingualism vs multilingualism, minority, human rights

1. Introduction

Issues of representation have become salient in recent years. The power of race and gender representation in fighting against prejudices has been embraced by mass and social media, and major changes have led to new voices being heard and enriching our common social experiences. This contribution will focus on a different social classifier, languages, which, especially in the European context, has been seen as the most powerful element in identity construction (Stokes, 2017). Our study declares a clear motivation – that systemic social differences between linguistic

groups that are avoidable, are inequitable and they should ~~to~~ be avoided. In a context of increasing international and regional awareness as to the productivity of language to engender identity and the recognition of rights for linguistic groups, we will argue that judicial systems have retained monolingual ideologies that do not allow the rights discourse to develop. Furthermore, and given the recognition of translation as instrumental in the realization of linguistic rights, we will examine how translation is operated and practiced in the courts of Kosovo and the Valencian Country and how this impacts linguistic rights. Our hypothesis is that judiciary practices are operated to entrench current social hierarchies between linguistic groups, resulting in the reproduction of prevailing monolingual ideologies.

2. Monolingualism, postmonolingualism, and translation in power asymmetries

Monolingualism is a term generally used to describe the knowledge of only one language. There are no official statistics available, but estimates suggest that only 40% of the world population is monolingual. Multilingualism is therefore the normal state of existence for the vast variety of the world's population. And yet, monolingualism is promoted as the ordinary way of being, while bilingualism or multilingualism are presented as the extraordinary (Flores, 2013). One has one language and learns others. In this paper, we use monolingualism in this second sense, to describe a policy where one language, and one variety, is taken as the normative state of being even when the empirical world is multilingual. This section describes the history of monolingualism as an ideology and how tensions have finally cracked monolingual models and introduced diversity as a desirable goal.

2.1. Monolingualism as a recent ideology

In medieval times there was no monolingualism.[1] This may sound counterintuitive as we may link multilingualism to education, and indeed European societies were inhospitably unequal and hierarchical, and education was hogged by the powerful. Culture and knowledge were both enshrined and hidden from the labouring masses, who would live their whole lives within the same group of people and nevertheless found no issues talking to their neighbouring linguistic communities. Of course, the situation of those whose movement was mostly limited was largely smoothed by the fact that the languages of the evolving linguistic families were highly homogeneous. However, this was only part of the picture. "[T] he conquered and colonized peripheries of Europe were familiar with languages of completely different language families being spoken in the same settlement or street" (Bartlett, 1994). The clergy, on the other hand, had access to education and

[1] On the efforts to acknowledge multilingualism as the standard in Medieval Europe and to reveal its underrepresentation in the extant literature see, e.g., Jefferson and Putter (2013), Mallette (2021), Classen (2016), Gaunt (2009).

would use their respective lingua franca to create and reproduce culture. Finally, the ruling classes established alliances resulting in multilingual families that governed over territories of moving boundaries, where the languages of their residents (at any rate different from the ones spoken by higher classes) did not deter their will to broaden the scope of their power, nor implied a desire to impose a different language on the conquered. There was no interest in micromanaging the languages of those territories, and language diversity was not a geopolitical issue but an everyday and changing experience.

However, the situation changed with the emergence of a respect for territorial integrity by the ruling classes. The peace treaties of Ausburg (1555) and Westphalia (1648) highlighted the boundaries between religious communities and linked those boundaries to dynasties (Vieytez, 2014). Around the same time, culture was being disseminated across social classes and religious, literary, and scientific books started to be consumed beyond the limits of cloisters once they were made widely available and less prohibitively expensive thanks to the invention of the print. Specific dynasties started efforts to make their own dialects prevail as a symbol of territorial unity, and the print market benefitted from the standardization of languages across linguistic communities, which, in turn, made languages less diverse (Anderson, 1976). A sense of community was further exploited by social movements that aimed at providing self-ruling powers to groups defined as ethnic (and class and gender) communities within the territory they identified as their own.

Later on, the ruling classes who developed the idea of "nation-state" at about "the time of the 1815 Congress of Vienna" (Preece, 1997, p. 78) pursued a territorial unity that would ensure loyalty through material and symbolic means. As feudal rulers did, modern era economic frontiers and custom tariffs did not take linguistic communities into account when imposing "national" symbols and barriers to inter-state exchanges. The so-created and self-designated European "nation-states" were never designed to achieve a perfect match between states and nations, but efforts were made to assimilate the population of their territories into one homogeneous "national" identity (Greenfeld, 1992), which included (and revered) one national language. The language of their choosing and the territory they occupied became linked and seen as a symbol of their political community. Divergence from the core features on which their 'equality' was based became a problem, a challenge to their political unity, and any differing features became salient as they became relevant to rulers. The dream of homogeneity, however, was never to be fulfilled, partially because of the 20th century conflicts that engendered mass refugee flows and increased intrastate multilingualism. 'Linguistic minorities', usually understood as 'national minorities' in Europe, became both a thing and a "problem" (Preece, 1997).

2.2. Entering postmonolingualism

The second half of the twentieth century brought about a drastic change in how the relationship between states and individuals was conceived of and developed in Western societies. Individuals were reinterpreted as the source of States' legitimacy

to develop and enforce rules (see, e.g., Gilley, 2006; McCullough, 2020). Against that background, institutions have become increasingly aware of their limits as heirs of monolingual assimilationist efforts and an awareness as to the importance of differences for societies to thrive, and the need for government efforts to cater to all of their constituencies, has been developing. The League of Nations' Minority Protection System (see Rosting, 1923) was the first attempt of the international community to systematically review and enforce the protection of minorities (Cowan, 2009), acknowledging the diversity of what would be later called the human family (United Nations, 1945).

That awakening led to the surfacing of linguistic policies, which were targeted and reengineered as the means to protect what was termed 'linguistic minorities' (Alcock, 2000). The term referred mainly to non-dominant languages that had been preserved by communities integrated within the territory of nation-states privileging a different language (see Capotorti, 1979). The stress on the power differential enshrined in Capotorti's dominant vs non-dominant dichotomy seems missing from the UN Special Rapporteur's definition of 'minority' (de Varennes, 2020, §70):

> an ethnic, religious, or linguistic minority is any group of persons that constitutes less than half of the population in the entire territory of a State whose members share common characteristics of culture, religion or language, or a combination of any of these.

The international discourse on human rights in general and linguistic rights in particular enshrines equality over sameness and departs from monolingual ideologies monitoring their doings with a 'protection' perspective that aims at shielding the rights of those whose language has not been wielded as 'the' legitimate language of a state apparatus, its services, and servants. However, issues of power have typically been neglected when establishing linguistic regimes and policies (Grin, 2008, p. 76). Discrimination being a question of power, this neglect signals a missing link between the international framework on the protection of minorities and the harm they are expected to prevent, even if only to avoid greater discontent (Preece, 1997, p. 76).

2.3. Postmonolingualism against discriminatory monolingualism and power asymmetries

The postmonolingual paradigm is the overcoming of monolingual nation-state ideologies by questioning the power relations it enshrines. Monolingual ideologies imply a moral and practical superiority of particular languages to manage the resources of both the dominant and the dominated, thereby establishing different sets of rights and obligations to contribute to common goods on the basis of the languages spoken. Rather than by pure good will towards minorities, the current international discourse on the protection of linguistic minorities against monolingual systems is inspired by the hard evidence of the risks of discrimination and exclusion for the wellbeing of individuals and societies at large (World Health Organization, 2020).

The Commission on Social Determinants of Health, set up by the World Health Organization, was mandated to marshal the scientific evidence on the social determinants of health that may guide policy-makers in improving their actions (Marmot & Friel, 2008). The findings highlighted how social hierarchies imply inequalities in the access to resources, including but not limited to access to healthcare, and how these inequalities from a very young age are linked to health outcomes. More recent studies have placed the focus on how less favoured social groups are burdened with added stressors in their social experiences (Williams et al., 2019), as discrimination and exclusion reduce their possibilities to access cooperation from others forcing them to either develop strategies to escape discrimination or to bear its effects. These stressors have been shown to negatively impact individuals' wellbeing but also their physical health. In the long run, the exclusion and discrimination of individuals and groups have consequences for the economy (Suhrcke et al., 2006) and for the wellbeing of societies at large (World Health Organization, 2020).

The available evidence requires international instruments to go beyond its current state and capture the consequences of the socioeconomic inequality resulting from power differentials between 'minorities' and the normative individuals for which governments have traditionally catered, i.e., "the inequality between the haves and the have-nots within society" (Altwicker, 2022). Scholars are producing relevant knowledge that will help legal systems in general and judicial systems in particular face the challenges caused by a mismatch between the privileges still enshrined in their systems and the protection of social cooperation. To do so, the protection of linguistic minorities in societies within diverse linguistic landscapes is an urgent matter. Practices that may endanger minorities' wellbeing need to be pinpointed in order to adequately protect those marginalized by mainstream needs while preserving the stability of our societies, the legitimacy of governments, and our possibilities to thrive.

This paper will take the courts as an object and focus on two judicial systems, Kosovo and the Valencian Country, to reveal specific practices that signal deficiencies in the protection against linguistic discrimination of regional linguistic minorities. Far from providing an exhaustive analysis of discrimination, specific issues, especially those related to translation, will be highlighted to contribute to the knowledge of how judicial systems inadvertently or advertently operate linguistic discrimination and enhance power differentials between linguistic groups.

3. Translation at the courts in Kosovo and Valencia: Monolingual ideologies?

Most countries and international institutions legally recognize one or more official languages. International organizations typically make intensive use of translation, sometimes devising complex systems to increase efficiency and the availability of translated documents (Cao & Zhao, 2008). From the policy perspective,

the inclusion of translation in public linguistic policies has been recognized as a positive change in the acceptance of our shared diversity (see Choudhuri, 1997). As regards legal instruments, translation has been seen as an instrument in ensuring basic human rights can be enjoyed (Izsák, 2013; Mowbray, 2017). As regards national institutions, the literature stresses paradigmatic cases of translation efforts which have centred the interest of translation studies, such as Canada (see, e.g., Bowker, 2008).

This paper focuses on the domestic situation of two countries which, despite the multilingualism of their population, have not been considered as paradigmatic in countering monolingualism nor central in translation studies. Our approach to Kosovo and the Valencian Country aims at highlighting how judiciary practices entrench current social hierarchies between linguistic groups. Based on Morris' tripartite focus on entitlement, determination (which we consider from the perspective of availability), and competence (Morris, 1999), we will identify contextual factors and specific cases that require systemic actions to protect linguistic minorities against the pernicious effects of discrimination. Following Morris, we understand entitlement as the recognition of rights for an individual to use their language, determination as the decision of the need to use a particular language, and competence as to specific requirements placed on the individuals who provide the translation in the minority language. Against this background, we will analyse the situations for Serbian and Catalan in Kosovo and the Valencian Country, respectively, and suggest nuances to be considered for minority (minoritized) languages.

3.1. Sociolinguistic context

In order to understand the situation of both Serbian and Catalan in Kosovo and the Valencian Country, respectively, some notes on the history and present situation of the languages in the political life of these territories will be provided in this section.

3.1.1. Sociolinguistic issues of Catalan speakers in the Valencian Country

The Valencian Country was a territory under the Crown of Aragon ruled by James I in the 13th century. It was populated with Aragonese and Catalan colonizers. The Kingdom of Valencia thrived in the 14th and 15th centuries producing extensive literature in Catalan and developing economically through the silk trade. It also developed politically, especially while the Valencian House of Borja held power in Rome. As a periphery, multilingualism was the rule, also impacting its flourishing legal tradition.

> "In these linguistically mixed societies translators and interpreters naturally played an essential role. Sometimes they held official positions. In Valencia, for example, there were official translators, with the title *torcimana*, from the Arabic *tarjuman*. […] the law court was one place where interpreters were particularly important" (Bartlett, 1994, p. 200)

The legal autonomy of the Valencian region was brought to an end with the expansion of the Kingdom of Castille that displaced one third of the population in the area based on its Islamic origin. Later on, in 1707, the Kingdom of Castille abolished the laws of the Kingdom of Valencia and prohibited the use of Catalan in the region (Marti Mestre, 2010). The population celebrated their own defeat assuming the name of *socarrats* (burned down) to remember the devastation inflicted by King Philip V of Spain on Valencian territories.

Assimilated in the Spanish nation-state, Catalan remained persecuted in the region until the beginning of the current political era (1977) after almost 40 years of dictatorship, with a short parenthesis in 1936 (the Second Spanish Republic). The protection of what accounts as a regional linguistic community in the area (see Table 1) was first developed in the Law on the Use and Teaching of the Valencian Language (Esteve i Gómez & Esteve i Gómez, 2019). The law, however, did not provide the legal means to protect the linguistic minority in any area but education and, to some extent, the regional and local public administrations.

Table 1. Evolution of rate of use of Valencian in the Valencian country

	1995	2004
Context	(n = 1,600)	(n = 6,755)
At home	49.2	36.5
With friends	39.9	32.8
In shops	42.1	32.2
In the supermarket	26.5	28.2
In the street	26.6	24.2
	(Percentages show respondents who chose 'always' or 'usually')	

Data sources: Conselleria d'Educació i Ciència (1995); Acadèmia Valenciana de la Llengua (2005)

3.1.2. Sociolinguistic issues impacting the entitlement of Serbian speakers in Kosovo

From the 6th century onward, Slavs began to settle in the area of Kosovo which slipped from Roman and Byzantine control and became a disputed border area. In the 12th century, the Serbian medieval state gained control of Kosovo, which became the heart of the Serbian empire. During that period, Nemanjić rulers had their main residences in Kosovo and many Serbian Orthodox churches and monasteries were built creating thus the cradle of the Serbian Orthodox religion. Kosovo was economically important, as the modern Kosovo capital Priština was a major trading centre on routes leading to ports on the Adriatic Sea. According to Serbian monastic charters, the ethnic composition of Kosovo's population during this period included Serbs, Albanians, Vlachs as well as a certain number of Greeks, Croats, Armenians, Saxons, and Bulgarians. After the Epic Battle of Kosovo on 28 June 1389, the Turkish Ottoman rule was established in Serbia, including Kosovo, and lasted for 500 years. The atrocities and cruelties performed by the Ottomans

forced many Christian Serbs to leave the area and seek refuge in Serbia. As a result, over the centuries, the religious and ethnic balance tipped in favour of Muslims and Albanians.

More recent history witnesses turbulent changes in the area. In 1918, Kosovo became part of the Kingdom of Serbia only to become part of an Italian-controlled greater Albania in 1941 and to be absorbed into the Yugoslav federation in 1946. During the 1960s, Belgrade showed increasing tolerance for Kosovan autonomy, so that in 1974 the Yugoslav constitution gave the province de facto self-government by proclaiming it an autonomous province, along with Vojvodina in the north. After the dissolution of Yugoslavia in the 1990s, the former autonomous province was part of Serbia until 2008 when Kosovo declared independence.

Today, Kosovo is a multi-ethnic country inhabited by an estimated 1.8 million people speaking several minority languages. The last Population, Households and Housing Census in Kosovo was conducted in April 2011 (Kosovo Agency of Statistics, 2021). The census did not provide data about the language distribution among the inhabitants in Kosovo. However, data are available regarding ethnicity based on which a vague conclusion may be drawn about the number of people speaking Albanian and Serbian. Other ethnicities except the Albanian and the Serbian ones have been counted under the entry "Others" (Table 2).

Table 2. Ethnicities in Kosovo

Total No of inhabitants	Ethnicity (%)		
	Albanian	Serbian	Other
1,739,825	92.0	1,5	5.6

Source: Kosovo Agency of Statistics (ASK), 2011

Although no official data about the language distribution in Kosovo is available, there are resources on the situation of the former Serbian autonomous province. For instance, pursuant to World Atlas (n.d.), the distribution of languages in Kosovo by population percentage in 2019 was as follows:

1. Albanian – 94.5%
2. Bosnian – 1.7%
3. Serbian – 1.6%
4. Turkish – 1.1%
5. Romani – 0.3%
6. Other/Not specified – 0.7%.

3.2. The entitlement of Catalan and Serbian speakers vis-à-vis the courts

In this section, the specific rights of speakers of the minority languages under study before the regional courts will be explored.

3.2.1. Catalan speakers' rights before the courts in the Valencian Country

No specific protection has been established to date as regards the judicial system for the Catalan minority in the region. As said, the protection of the Catalan language in the Valencian Country refers mainly to education rights (Esteve i Gómez & Esteve i Gómez, 2019). However, the Constitutional law in Spain enshrines a right to non-discrimination on the basis of language in the territories where languages other than Spanish have an official status. The emphasis on territories is important as the rights of regional linguistic minorities are conceived of in the Spanish system as geographically limited. This is actually in line with the European Charter for Regional or Minority Languages (ECRML), to which Spain is a party.

At any rate, there is no disposition that promotes, let alone favours, the use of Catalan in court proceedings. On the contrary, the Organic Law on the Judiciary establishes that Spanish is the default language of the courts and that all court officials must use Spanish (article 231). Legal officials are insistently recognized the right to monolingualism (Spanish Law 50/1981, on the Organic Statute of the Public Prosecutor's Office, Law 6/1985 on the judiciary, Regulation 2/2011 on the law profession, and Royal Decrees 296/1996, 1451/2005, 1600/2005, 634/2014, among others), and to choose the language of the proceedings. This right is also recognized to Spanish speakers, and is grounded on the obligation of all Spanish citizens to know Spanish, as established by Spain's Constitution. The rights available to foreign citizens under article 123.1 of the Law 5/2015 on Criminal Procedure (right to interpreters during police interviews, council consultations, and part of the hearing, and right to the translation of 'essential parts' of documents) are therefore not to be applied to the speakers of minority languages.

Conversely, Spanish speakers have the right to use Spanish all over the State, whereas, as said, Catalan speakers can only invoke such right within specific territories, and provided that it is not argued to harm Spanish speakers' rights. Indeed, if a court decides to conduct proceedings in Catalan, any Spanish-speaking defendant or plaintiff may argue 'defencelessness', that is, an inability to implement their right to defence based on their not knowing the language of the proceedings. Similarly, and pursuant to the aforementioned article 231 of the Organic Law on the Judiciary, Catalan speakers are required to translate any documents into the dominant language, Spanish, if they are to be effective in Spanish territories where Catalan is not an official language.

Against this background, there is a clear distinction between the quality of rights recognized to Catalan speakers, who have a qualified right within the limits of the Catalan-speaking territories, and Spanish speakers, who have a right across territories which trumps any other. This means that Catalan speakers can only use their language when everyone in the case (including court officials) are members of their linguistic community, which is at odds with the evolution of multilingual and multicultural societies. As amply discussed and recognized by the Committee of Experts of the ECRML, the aforementioned article 231 is a major obstacle for

Spain to fulfil its international commitments to protect its linguistic communities. The fact that Spanish court officials are not required to show any competence of the language of the territory where they serve, limits "the possibility of the minority or regional speakers to avail of their right to use their language during judicial proceedings" (ECRML Committee of Experts, 2021, §15). The Committee has repeatedly recommended that the law should be amended to allow for the use of the official minority languages "at the sole request of one of the parties" (ECRML Committee of Experts, 2021, Recommendation 2.2.a), but no action has been taken by the Spanish Government.

3.2.1. Serbian speakers' rights before the courts

Pursuant to the Law on the Use of Languages (2006), Serbian is an official language along with Albanian while special status is given to Bosnian, Turkish, Gorani, and Roman as minority languages. However, there seems to be no official consensus regarding the variant of the Albanian language. Neither is there such consensus regarding the variant used in the translations for Kosovar institutions. The only known fact is that Kosovars adopted the literary norm of the Albanian language according to the 1977 Orthography Congress, but the influence of the Serbo-Croat in Kosovo during the time it was an integrative part of Yugoslavia was substantial (Kryeziu, 2018).

The Law on the Use of Languages (2006) also stipulates that all "persons have equal rights with regard to the use of the official languages in Kosovo institutions" (Article 2.1). Unfortunately, official statements (Radonjić, 2018), empirical research (Beqaj, 2019) as well as official reports, including the Ombudsperson's Annual Report (2019) and the European Commission report (2019), confirm social and legal practices do not conform to the Law. The right to use the Serbian language at all levels (administration, education, legal representation, etc.) is violated primarily due to the fact that translations of official documents and information is of a low quality (Qelaj, 2019). The same issue has been confirmed in the European Commission report (Ibid.) which states that "[e]nsuring access to judicial proceedings in the Albanian and Serbian languages across Kosovo and the use of both languages in the work of judicial bodies remains a challenge due to a lack of qualified translators" (Ibid.: 16). In brief, the Law on the Use of Languages (2006) is violated and institutions and public services do not ensure the equal use of both Serbian and Albanian in every aspect of life in Kosovo. The Government in Priština does not fulfil its obligation to provide documents in Serbian and Albanian.

3.3. Determining the need for translation in court settings in both Kosovo and Valencia

3.3.1. The Valencian Country

Within the framework described above for the Catalan language, it would be difficult to argue personal discrimination before the courts, as Catalan speakers in

the Valencian Country are legally required to speak Spanish. Indeed, given that all Spanish citizens have the duty to know Spanish, no court bears an obligation to conduct proceedings in Catalan. A number of implications can be drawn.

First, the determination of the need of Catalan speakers to use their language in legal proceedings is subject to a legal fiction, their knowledge of Spanish. Knowledge of Spanish is indeed widespread, but not universal among Catalan speakers, especially those from older generations and, when existent, the knowledge does not always allow a fluid expression of a defence or an interest. Regarding the issues related to representation of the language and its health and socioeconomic implications, it would be disingenuous to accept that the protection of the needs of Catalan speaker in the Valencian Country is adequate. With a population of 5,037,050, only one court (Moncada's Court of First Instance and Instruction No. 1) and one of the judges sitting in a second court (Administrative Court No. 9) conduct proceedings in Catalan on a regular basis. In the rest of cases, Catalan speakers are forced to use Spanish.

A second implication is that translation into the dominant language for the authorities has not made its way to the legal imaginary of the Spanish legal system, thereby curtailing the right to effectively use the minority language. As indicated above, when learning the language or imposing the knowledge of the regional language on public staff is not an option, translation has been considered a policy solution. The availability of translation is however limited in Valencian courts, where there is only one in-house translator for the judicial system of a territory of 5,037,050 inhabitants. The lack of in-house translators is not based on a lack of trained interpreters (in contrast to the situation in Kosovo). Three public and two private universities in the region each allow around 90 students of undergraduate Translation and Interpreting degrees to graduate each year. However, only the public universities provide students to develop first-language skills in Catalan. This is not without opposition, as efforts are periodically made by the faculties to preclude students to access training in Catalan (the University of one of the authors being a case in point). Further information will be given under the competence section.

As a result, there is a dearth of Catalan-language material at the disposal of both court officials and citizens. Indeed, only part of the forms available to citizens have been translated into Catalan and no part of actual proceedings taking place in the Valencian Country is translated into Catalan by the courts, thereby obscuring the very existence of the minority language and resulting in a severe underrepresentation of the Catalan-speaking population in the judicial system (ECRML Committee of Experts, 2021, §13).

3.3.2. Kosovo

Despite the obligation of the Kosovo government to provide equal language representation for Serbian native speakers, various official reports on the translation in legal settings in Kosovo, including the Ombudsperson's Annual Report (2019) and the European Commission report (2019), agree that laws have not been translated

properly into the Serbian language. Discrepancies, incoherence, and inconsistence are common and frequent. The "differences between the versions in Albanian and Serbian languages in terms of terminology and essence are substantial, despite the fact that both versions are equally authentic and when it comes to interpretation none of these versions have any superiority over the other" (Annual Report, 2019, p.127).

Another problem in Kosovo is that the drafting model of laws and regulations is decentralised and monolingual (OSCE, 2018). All legislation is drafted in the Albanian language and then translated into Serbian. The quality of the translation depends on the capacity of either ministries (in cases of laws) or the Assembly (in cases of amendments). In addition, there are "no established guidelines that set out either standard translation for legal terms or a translation process that ensures accuracy in drafting and translation of laws" and no "effective mechanism is in place to ensure consistency between official language versions of draft laws" which is why errors throughout the process of approval of a draft law are perpetuated (OSCE, 2018, p. 11). These errors alter the meaning and they "create confusion and uncertainty in the legal framework. These include instances where an incorrect word is used to relay meaning, entire sentences are missing or incorrectly translated, or even where sanctions or time periods for exercising rights are different in the two language versions of laws" (2018, p.13).

Regarding the translation from Serbian to Albanian, the problems are the same whereby a lack of professional translators from Serbian to Albanian is even more evident. A general search for translators conducted for the purpose of this research yielded a modest number of only two official translators (sworn and appointed) in Kosovo (both living and working in Priština) who confirmed that they translate legal documents and interpret from Serbian into Albanian and vice versa in court hearings. In general, inaccurate interpretation in court hearings and inaccurate translation of case files often has devastating consequences for the final verdict and a person's liberty.

3.4. Competence

Following Morris (1999), competence refers to the guarantees an agent must satisfy in order to be entrusted the authority to translate before the courts, in the case at hand, for members of linguistic communities. An issue closely related to competence is quality. Ensuring translations meet quality standards is an issue related to both input and output. When talking about input, the quality of the translation system needs to be examined, which includes the availability of resources and agents. When focusing on output, any assessment needs to be based on what the translation needs to fulfil, in this case, the use of the minority language in the courts with no forfeit of rights for speakers of minority languages.

3.4.1. Competence to translate into Catalan before the courts in the Valencian Country

The court system in the Valencian Country has a translation service, where one person (P.M.) working on a permanent basis is assigned to translate from and

into Catalan. There is also a machine translation system in place (Minerva) that has provided the translation for part of the legal forms to be used by citizens. Further, as in the rest of the Spanish court system, sworn translation and interpreters can be appointed. These situations will be further explored below.

The fact that only one person is translating into and from the minority language in a community of 5,037,050 inhabitants is significant. It is even more revealing when we see her work involves basically translation into the dominant language for the court officials who cannot understand Catalan in a territory where citizens are recognized the right to use it. Translation in this context works as a system to ensure that monolingualism causes no trouble to any court agent.

On the other hand, sworn translators may be asked to act before the courts in both criminal and civil cases. There is a central system to certify translators from any languages into Spanish, and one regional system in Catalonia to certify translators working with any language and Catalan. There is no system in place in the Valencian Country, although authorizations of translated documents by translators appointed by the neighbouring Catalonia may be accepted. However, parties would rather switch to Spanish if the judge assigned to their case commands the proceedings to be held in Spanish (ECRML Committee of Experts, 2021, §13).

As for resources, a system to translate from Spanish into Catalan was launched by the regional administration at the end of the last century for government offices, although the translation of judicial terminology is a project which is being launched only this year by the Valencian Language Academy. A machine translation system was developed for the Spanish court system, Minerva, and it has been used in judicial proceedings to translate forms into Spain's official minority languages. The quality of the results has been challenged and, indeed, the ECRML Committee of Experts insists that machine translation systems "cannot fully replace the human knowledge and understanding of a court case" (ECRML Committee of Experts, 2021, §16). This is coherent with the results of Bowker's experiment regarding the acceptability of machine translation output for members of the French minority linguistic community in Canada (2008). The participants in her experiment would rather read the original English than a machine-translated French. As this would not result in the increased use of the minority language, we can see that machine-translated texts do not meet a quality standard that is adequate to fulfil the purposes of the CRML.

Even though a survey was launched in 2020 in order to gather information on the effective use of regional or minority languages in judicial proceedings, the content and results of the survey have not been made available. There is no other source of information as to the satisfaction of users with the use of Catalan and translation into Catalan in the judicial system in the Valencian Country.

3.4.2. Competence to translate into Serbian before the courts in Kosovo

Regarding the same issues in Kosovo, Kosovo Ministries lack their own or any central translation service and often resort to private companies for translation purposes. As stated by a member of the Consultative Council for Communities,

there is only one translator in the Serbian < > Albanian language pair in Kosovo whose mother tongue is Serbian (AKTIV, 2018). An attempt to regulate the situation has been made by establishing the Office for translation and support of the Kosovo Judicial Council (KJC). Among other things, it is responsible for the translation of all materials and letters, documents in two languages. However, a common fact is that translators working for the government, including those translating in official procedures, receive limited financial resources and modest compensation, the network of translators is uncoordinated and political leaders are generally not interested, which are additional elements contributing to a low quality of translations in Kosovo (Vićić & Andrić, 2016). In most cases the translation of documents from and into Serbian is at an unsatisfactory level. For instance, a document (Policy Brief, 2016) prepared with the aim to point to the problem of translation in Kosovo summarized that the translation of the Criminal Code of Kosovo had 2,000 terminological errors, as well as more than 2,100 grammatical errors and more than 1,300 errors in spelling. The team working on the document confirmed that a lot of the terminology occurring in the translations of legal documents was inaccurate and that both lawyers and laymen alike often resort to English translations of the same documents for clarification (Petković, 2014).

Only recently has the UNDP started working with justice institutions in Kosovo to improve the quality of translation and multilingual services in Kosovo courts. In January–June 2021, UNDP, with the financial assistance of the United Nations Programmatic funds on Rule of Law, supported the Basic Court of Prishtinë/Priština – the biggest Kosovo court – to translate 222 backlogged case files, provided some training to potential translators and implemented a regional exchange on the topic for Kosovo and North Macedonia court translators (UNDP, 2021). An improvement with respect to language representation based on translation in Kosovo is yet to be expected.

4. Conclusions

Our review has shown that there is an overwhelming lack of representation of both Serbian and Catalan in the courts of Kosovo and the Valencian Country, respectively. Despite the legal obligation to avoid discrimination of speakers of non-dominant languages, judiciary practices discourage and endanger the maintenance and development of the regional and minority languages in both settings. From regulation deficiencies and legal fictions to incoherent practices in both legal settings and training, Kosovo and Valencia are supporting and fostering the belief in the power of monolingualism.

Based on Morris' (1999) tripartite focus on entitlement, determination (and availability), and competence (and quality), our analysis has shown striking shortcomings in both systems. The situation in Kosovo proves that the Serbian minority cannot use their language in official proceedings due to the fact that adequate translation is unavailable and that proper access to language through

professional translators is not given. Despite its recognition as an official language (Law on the Use of Languages, 2006), the right to use the Serbian language at all levels (administration, education, legal representation, etc.) is violated primarily due to the fact that translations of official documents and information is of low quality (Qelaj, 2019). Reality confirms that inaccurate interpretation in court hearings and inaccurate translation of case files still affect the final verdict and a person's liberty to a large extent.

In the Valencian Country, the promotion of minority languages in judicial settings as required in Article 9 of the ECRML is neglected. The hierarchy of rights between Spanish and Catalan speakers ensure that Spanish will prevail, and that Catalan can only be used in cases where court officials and parties are members of the Catalan linguistic community in a court within a Catalan-speaking territory. Based on the legal framework offering virtually no entitlement to Catalan speakers to use their language and have their language used in courts, their needs are obscured by a constitutional obligation to know Spanish. This situation impacts the possibilities for training when universities ponder the cost of training Catalan translators against their social demand. The fact that the Valencian Government has no specific appointment to translate and interpret for the courts equally impacts the lack of promotion of the minority language.

As for quality, we have stressed that quality is a social construct, and that its assessment is dependent on the community and its impact on the rights of minority-language speakers. Further studies are required to clarify whether Catalan and Serbian-speaking communities would see an increase in their use of their languages if machine translation systems were to be used, or if the quality of the system may result in a decreased use of the languages.

Our analysis shows that Serbian and Catalan linguistic communities in Kosovo and the Valencian Country are the unessential unequal and tolerated, at most. As Greenfeld argues, "to be tolerated is precarious, and toleration has nothing in common with equality" (Greenfeld, 2019, p. 6). However, our limitations must be highlighted. These are primarily related to the scarcity of sources analysed. Official or unofficial surveys on the issues we have commented on are limited. Further studies should address this limitation and include data on translation agencies, associations, or societies to determine how many translators provide adequate and professional translation to minority members in court procedures. Despite the limitations, this research shows that the availability and training of future translators merits further consideration and institutional support.

Even on the grounds of our limited study, we can only encourage the court systems in both Kosovo and Spain to face the dangers in refusing to embrace difference:

> "From the western point of view a multiplicity of languages, religions and races is regarded as leading to fragmentation, even though, in fact, such multiplicity gives importance to every part of the whole. Rather, it is monolithic structures that may create fragmentation — of life, of man, and of knowledge —, undermining the unity of living." (Choudhuri, 1997, 439)

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MOĆ NEADEKVATNOG JEZIČKOG ZASTUPANJA U SUDSKIM POSTUPCIMA: MONOLINGVALNOST PROTIV LJUDSKIH PRAVA

Međunarodni instrumenti već dugo prepoznaju moć jezika i doneli su mere kako bi ublažili i sprečili štetu nastalu uskraćivanjem prava na jezik. Zaista, jezička prava se sve češće sagledavaju kao instrument za ostvarivanje ljudskih prava. U različitim kontekstima, efikasna realizacija najosnovnijih ljudskih prava zavisi od prevoda sa jezika manjine na većinski jezik. Pravni postupci su jedan primer, a Evropska konvencija za ljudska prava (Član 6) garantuje pravo na tumačenje i prevođenje za one koji ne govore ili ne razumeju jezik na kome se sprovodi postupak. Međutim, monolingvalne ideologije i dalje u velikoj meri prete društvima što za posledicu ima brojne nepravilnosti koje govornicima jezika kategorizovanih u društvu kao manjinski onemogućavaju pristup neophodnim resursima na osnovu kojih bi mogli da uživaju svoja prava. Ovaj rad prikazuje dva različita konteksta, Kosovo i Valensiju. Uprkos pravnoj obavezi da izbegnu diskriminaciju govornika manjinskih jezika, pravni postupci obeshrabruju i ugrožavaju održavanje i razvoj regionalnih i manjinskih jezika u oba okruženja. Ovaj prikaz ističe nedostatak zrelosti pravno-prevodilačkih odredbi pri čemu se pre svega bavi tačnošću, kvalitetom i dostupnošću prevoda ili njegovog izostanka. Rezultati ukazuju da pripremljenost društva da sagleda sve raznovrsnije aspekte u vezi sa pravom na zastupanje na manjinskom jeziku, počev od obuke prevodilaca do standarda kvaliteta, zahteva za unapređenje.

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