

## **Ikastolen Elkartea, example of effective transfrontier cooperation under the European Language Charter**

IHINTZA PALACÍN MARISCAL\*

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### **Abstract**

Basque language subsists in a transfrontier situation. Indeed, this minority or regional language lives between France and Spain. Under the European Legal Framework, the European Charter for Regional or Minority Languages provides tools to protect this minority language. Facing different legal regimes of protection and different legal structures Euskara (Basque language) receives support from education. Through the realisation of ethnography of the Basque schooling system (Ikastolen Elkartea) I am going to analyse the transfrontier cooperation established under Art.14 of the Charter using the example of education in Basque.

### **Key words**

Minority; language; frontier; cooperation; European Law; education; France; Spain; Basque

### **Resumen**

La lengua vasca subsiste en una situación transfronteriza, ya que esta lengua minoritaria o regional existe tanto en Francia como en España. Dentro del marco normativo europeo, la Carta Europea de las Lenguas Minoritarias o Regionales proporciona herramientas para proteger esta lengua minoritaria. Así pues, el euskera, al que se aplican diferentes regímenes de protección jurídica y diferentes estructuras legales, recibe apoyo educativo. A través de una etnografía del sistema de escolarización vasco (Ikastolen Elkartea), me propongo analizar la cooperación transfronteriza tejida bajo los auspicios del artículo 14 de la Carta, utilizando el ejemplo de la educación en euskera.

### **Palabras clave**

Minoría; lengua; frontera; cooperación; normativa europea; educación; Francia; España; euskera

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\* Ihintza Palacín Mariscal is a researcher at the European University Institute (Florence, Italy). Contact details: Law Department; Via Bolognese 156; 50139 Florence, Italy. Email address: [ihintza.palacin@eui.eu](mailto:ihintza.palacin@eui.eu).



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## 1. Introduction

Protection of languages has a deep importance for minorities. Law tries to protect languages and minorities in different levels. One level of protection of languages and minorities is through education. Indeed, education and language are intrinsically linked: through education we can learn and develop a language; we can transmit a culture and its values. Ikastolen Elkartea is a European Cooperative, which has worked for an education in Basque language since its beginning in the 60s. Therefore, in this article,<sup>1</sup> I am going to focus on the minority language of Basque and in Basque schooling.

According to Article 1.1 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992): "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity".

In this article, we are going to focus on a more specific minority group: the Basque linguistic minority. Article 1.a of the European Charter for the Protection of Regional or Minority Languages (hereinafter Language Charter 1992) gives the definition of regional or minority languages. These languages are:

- 1 traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population; and
- 2 different from the official language(s) of that State; it does not include either dialects of the official language(s) of the State or the languages of migrants

Once we have established what a minority and what a minority language is, we will need to focus on the example of Euskara,<sup>2</sup> the language of Basques.

Urbiola Loarte (2008) explains how the roots of the Basque language trace back to prehistoric times, "it is the only pre-Indo-European language still in use in western Europe" (p. 112). The particularity of this language is not only its origin, but also its geographical location. Indeed, Urrutia Libarona (2006, 417), highlights: "the situation of contact of the Basque with French and Spanish produces [...] an unequal weight of each one of these from a geographical, sociolinguistic and functional way". Thus, one of the reasons why Basque language is a minority language is because the weight that French and Spanish carry. In addition, Urrutia Libarona (2006, p. 417) adds: "Basque is a minority language even within its own territory. The minority status of the Basque language is evidenced not only with its relationship towards the extent to which people knows it, but also in relation to the social or communicative functions that act through a language".

Another implication of the geographical location of this language is that it depends on two main different legal systems (French and Spanish), leading to a diverse protection status. Moreover, the heterogeneity of the statute of Euskara has an impact on the number of speakers. Indeed, the places where Basque has more protection (Basque Autonomous Community) the number of speakers is rising, whereas there is no legal protection (France), the number of speakers is declining (Baztarrika 2010, p. 148). One on the main reason of Euskara's rebirth is education.

According to Dieter Beiter (2005, p. 142), "[m]inorities normally strive to preserve their identity (...). Education constitutes one of the essential means for preserving minority identity". Therefore, an education system that meets the needs to

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<sup>1</sup> This article is adapted from the author's Master's thesis (2015, IISL).

<sup>2</sup> Euskara is the name of the Basque language. It must be noted that, according to the UNESCO's Atlas of Languages in Danger, Euskara is vulnerable (UNESCO 2015).

linguistic minorities is essential for the protection of this language. Thus, I am going to focus on a specific case of Basque schooling: Ikastolen Elkartea.<sup>3</sup>

During my conversation with J. Iñaki Etxezarreta<sup>4</sup> in a semi-structured interview, he defines an Ikastola as being a “Basque self-management of education”.<sup>5</sup> Ikastolen Elkartea is, thus, the organisation of various Ikastolas.

He explained that, although schools already existed through decades, they were mainly, until the ninetieth century, under the monopole of the Church in Europe. Indeed, modern schools were born in the twentieth century. In what concerns us - France and Spain - the Falloux law (France) and the Moyano law (Spain) made school obligatory. This meant there were two powers (Church and State) and two schools.

This duality started the process of acculturation of Basques. Indeed, there was an attempt of erasing their culture and language. This led to the creation of the first Ikastola in 1914 by Miguel de Muñoa in Donostia-San Sebastián.<sup>6</sup> Therefore, a civil organisation innovated an alternative schooling system in order to preserve Basque language and culture. This organisation has worked, since its beginning in the 60s in a transfrontier way, enabling Euskara to survive.

Nowadays, the European Language Charter rules the protection of Regional or Minority Languages at European level. In addition, national and international legal frameworks try also to protect minority languages and their right to education. Therefore, we must analyse the situation of Ikastolas in this contemporary context. In order to do so, we are going to focus on the transfrontier cooperation under the Article 14 of the Language Charter. Indeed, focusing on the analysis of the monitoring activity of the Committee of Experts, I want to know if Ikastolen Elkartea can be seen as an example of transfrontier cooperation under the Language Charter. As it appears, the issue of this “association of Basque schools” is complex and needs a broad contextualisation.

As mentioned, my object of study being Ikastolen Elkartea, it is a reflection of transfrontier cooperation, since it contains schools in the entire territory where Basque is spoken: the Basque Country.<sup>7</sup> It is not the only institution, civil organisation or association which works in this transfrontier way, but it is the most distinctive one. The time and space restrictions of this paper compelled to choose only one example, and I do think that Ikastolen Elkartea is one of the most peculiar cases worth studying. In addition to that, knowing how important education is for a linguistic minority, the analysis of this example looked most appropriate.

In order to proceed, I have chosen to make ethnography of this cooperative, understood as a wide contextualisation. As Donovan (2007, p.17) states, “while all

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<sup>3</sup> Ikastolen Elkartea is the association of Basque schools, known as Ikastolas. For this thesis I am going to focus of this example, knowing that it is the only common schooling system in the entire territory of the Basque Country. Other schooling systems such as the public system of Ikas-bi, A, B, and D models are not available everywhere. Also, I am going to centre my study mainly in primary education and not on secondary or university education.

<sup>4</sup> Former head of Ikastolen Elkartea, director of the Ikastola Arizmendi.

<sup>5</sup> In his own words: “Autoeraketa euskalduna hezkuntzan”.

<sup>6</sup> For Etxezarreta, what could explain the creation of Ikastolas in the Basque Country is that, in the twentieth century, for the first time in the Basque History, a worker class becomes a middle class due to the economic development. They have economic resources and want a Basque education, a school in Basque. This led to the creation of Ikastolas, creating the third power, the social power. Therefore, Ikastola is a social self-managed education in Basque.

<sup>7</sup> For this research, while using the label Basque Country, or *Euskal Herria*, I refer to the Basque Country as a whole, not merely the Basque Autonomous Community located in Spain. This means I will use locations where Basque is spoken. Indeed, the Basque Country contains, in its wider understanding, seven regions, four of them located in Spain (Gipuzkoa, Araba, Bizkaia, Nafarroa Garaia), and three located in France (Lapurdi, Nafarroa Beherea and Zuberoa). I am going to take into consideration, for our study, the Basque Country in this broad sense. I am going to refer to the Basque Country, as implying this definition of seven regions. This should not be mistaken with the Basque Autonomous Community located in Spain.

disciplines like their questions “answered”, anthropologists require that they be contextualised”. Thus, I have conducted a thick contextualisation of Ikastolen Elkartea. In order to do so, I had to analyse, firstly, the regional law of the European Charter for Regional or Minority Languages, and specially its Article 14 ruling transfrontier cooperation. Secondly, I had to approach Ikastolen Elkartea as an example of transfrontier cooperation under the already mentioned Article 14.

In order to do this last part, I focused on the three elements that form this compliance to the Article 14: geographical location, official status of the language, and effective transfrontier cooperation. Therefore, this “thick description” as Geertz (1977) called it, implied the use of documents mainly, with some help through non-structured interviews with Etxezarreta (former director of the Ikastolen Elkartea and director of the Ikastola Arizmendi) and Etcheberry (working in the direction team of Seaska and member of the parent’s association of the Ikastola of Bayonne). These two non-structured interviews gave the deep vision of Ikastolen Elkartea itself, but also a better historical background. Concerning Seaska, Etcheberry gave me the feelings from inside the association concerning what I found in books and law.

Concerning the theoretical part of this research, no specific theory has been followed. Indeed, in Donovan’s words, “ethnography is the most atheoretical work undertaken in the discipline” (Donovan 2007, p. 17). However, this lack of theory remains relative. No ethnographer is fully objective, because every single human being has a different background and ways of seeing or feeling. Following the reasoning of this author (Donovan 2007), while doing ethnography, I must analyse rules, behaviours and institutions. Therefore, I have analysed rules (law), behaviours (transnational cooperation) and institutions (Ikastolen Elkartea).

## 2. Ikastolas: a transfrontier phenomenon

In order to start analysing the example of Ikastolen Elkartea, we must, firstly, understand what this European Cooperative is. Therefore, we should start our analysis with the historical background of this “association of Basque schools”.

### 2.1. Historical introduction to the Ikastola phenomenon

Masa (2011, p.178) explains:

Ikastolas were created as a result of a popular initiative, given the fact that the alternatives (whether private or public) that were previously available did not meet the needs and demands of an important sector of individuals and groups, and of the collectivity of the Basque people as a whole—a people that had considered Euskara to be an essential component of its identity. At that time, schools were instruments of acculturation and colonization.

In fact, this popular initiative started before the Franco era in Spain. Before the Spanish Civil War (1936-1939), around 30 schools were present in Bizkaia and Gipuzkoa.<sup>8</sup> However, during the early years of dictatorship of Franco, any attempt related to minority identity preservation was repressed. After 1947, a clandestine social movement emerged and some Ikastolas started opening in secret. During the 1960s, the spread of Basque schools was stronger and harder to control. In fact, the opening of Ikastolas was seen as a form of resistance against the Caudillo’s regime, and it worked. In a context of social discontent, using Onaindia’s words, Basque citizens created “the most innovative sociolinguistic movement in the history of the Basque nation” (Onaindia 1994, 11).

In Southern Basque Country (Spain), the dissatisfaction of Basques was a result of the dictatorship of Franco in terms of linguistic prohibition<sup>9</sup> and an inadequate

<sup>8</sup> Regions of Vizcaya and Guipúzcoa, in Basque language.

<sup>9</sup> The laws of the dictatorship did not expressly forbid Euskara, but its use in public was persecuted.

educational system (Masa 2011). This led to the particular model of Basque schooling that still works nowadays. Alfonso Unceta underlines:

The Basque education system has characteristics that place it beyond the public-private dichotomy. The strong presence of religious orders, together with the fact that the Ikastola movement emerged and developed during the second half of the twentieth century, at a time when Franco's regime [...] lacked legitimacy, are crucial factors to understanding the importance of private initiative in education, as well as its role in the specific form that the educational system took on later during the current period of autonomy. (Quoted in Masa 2011, p. 179)

Ikastolen Elkartea association was created at the same time with the Ikastolas. In 1987, there were five federations under the Basque school's confederation of the Ikastolen Elkartea. It is worth mentioning, when the first confederation of Ikastolas was created, it had a "cultural protection" due to the Basque Government's<sup>10</sup> financial help. In 2002, Ikastolen Elkartea became a European Economic Interest Grouping. Here, the five territories (Gipuzkoa, Araba, Bizkaia, Nafarroa and Iparralde)<sup>11</sup> had one vote and took decisions unanimously. This meant that, in order to take a decision, the five votes were necessary. This system still works nowadays. Finally, in 2009, Ikastolen Elkartea became a European Cooperative.

One cannot evoke Ikastolen Elkartea without mentioning Seaska. Indeed, knowing the particularity of the Basque Country in its entirety, being divided between two states, we also need to talk about the organisation of Ikastolas of Iparralde, which is held inside the Ikastolen Elkartea federation.

## 2.2. *Ikastolas in France: the Seaska phenomenon*

In Iparralde, the Basques were suffering an acculturation that led to a discontent of some parents; who started the movement of Ikastolas. In 1966 the first class entirely taught in Basque was created in Bayonne. Even if this experiment only lasted for one year, it was the beginning of a movement of a bigger scope. However, these schools were not under a contract with the State and, thus, did not receive any financial support.

The policy of linguistic exclusion driven by the French State during almost two centuries excluded the Euskara to be marginalised in public schools (Cassan 1997). Indeed, the Deixonne law of 1951 (Loi n° 51-46) authorised the teaching of regional languages, but did not precise a time schedule devoted to it. In addition to that, another obstacle was the ignorance of Basque by the majority of educators.

Facing political and social hostility against Basque language and Basque culture, the Ikastolas were created in 1969 in Iparralde. Indeed, this social movement was seen as the only solution towards the protection of Basque identity and language, in order to face the cultural repression.

In line with the creation of Ikastolas in the northern Basque Country, Seaska was born on 24 May 1969. As it appears in the *Journal Officiel*, Seaska is an association ruled under the Law of 1901, created with "the aim to promote Basque schooling and Basque culture in children" (*Journal Officiel de la République Française* 1969a).

<sup>12</sup>

<sup>10</sup> Located in the autonomous community of the Basque Country.

<sup>11</sup> Although the whole Basque Country contains seven regions (Gipuzkoa, Araba, Bizkaia, Nafarroa, Lapurdi, Nafarra-Beherea and Zuberoa), the Ikastolas of Northern Basque Country (Iparralde) are all united under the same entity, which is Seaska. Thus, Seaska represents the three regions of Iparralde commonly. Iparralde refers to the northern part of the Basque Country and the Southern part is named Hegoalde. I am going to use Iparralde to refer to the French side of the Basque Country and Hegoalde to refer to the Spanish side of the Basque Country.

<sup>12</sup> Translation by the author of the official text of *Journal Officiel*, 24 May 1969, which states the following: "30 avril 1969. Déclaration à la sous-préfecture de Bayonne. Seaska. But: promouvoir l'éducation et la culture basque chez les enfants." (*Journal Officiel de la République Française* 1969a).

After the already mentioned first initiative of parents, openings were more and more numerous from 1970 to 1980.<sup>13</sup> In 1969, eight children were forming the only Ikastola in Iparralde and in 1980, more than 500 pupils were already registered in twenty-seven Basque schools. It must also be said that starting from 1975, a school offering secondary level of education was created. This success is due firstly, to the pedagogical system, and secondly, and more importantly, to the teaching in Basque language. In fact, the association Seaska wants to create a bilingual future, with children speaking both perfectly Basque and French. In order to achieve this goal, the model privileges the Basque language over the French. Indeed, the everyday life of a child being mostly in French language in Iparralde, the Ikastolas estimate the Basque should be emphasized. Thus, the solution they offer is linguistic immersion.

After approaching the historical background of Ikastolen Elkartea, anyone can note the ambiguous situation in the French side of the Basque Country, where Seaska is still, in 2017, ruled under the Law of Associations of 1901. In the Spanish side, however, a more comprehensive schooling system towards Basque language has been adopted. Apart from the Ikastolas, a short introduction to the ruling of education in the autonomous community of the Basque Country and of Navarre would help us to place ourselves in the legal context.

### *2.3. General regulation of Basque language in Spain*

In order to understand the phenomenon of Ikastolen Elkartea nowadays, we also need to put it in its legal context. Therefore, we are going to set out the general regulation of education in Basque for Hegoalde.<sup>14</sup> However, before moving forward, the legal status of regional languages of Spain should be unfolded.

#### *2.3.1. Legal status of languages in Spain: an introduction*

Pérez Fernández (2006) explains how, in order to know what the official status of languages in Spain is, one needs to refer to the Spanish Constitutional Court's decision 82/1986. According to this decision, an official language should be "[a language] which is recognised by public powers as a normal way of communication in and between them and in their relationship with private subjects, with complete validity and legal effects" (STC 82/1986). This official recognition must be independent from the reality and the importance of the social phenomenon, which could have the language in question. It is the political and legal decisions that should take precedence over the sociolinguistic reality.

Concerning the constitutional text of Spain of 1978, one could note that, in the Preamble, the following appears: "The Spanish Nation (...). Protect all Spaniards and peoples of Spain in the exercise of human rights, of their cultures and traditions, and of their languages and institutions", which allows obtaining a first confirmation: the recognition of the multilingual reality of Spain.

Following up with the corpus of the Constitution, the Articles 3, 20.3 and 148.1.17 concern languages. According to Pérez Fernández (2006), the constitutional recognition of the multilingual reality of Spain connects with some guarantees to make it effective. This is accomplished through the right of autonomy of nationalities and regions, provided in the Article 2 (Constitución Española 1978), and with the establishment of a system of devolution of powers that characterises a decentralised state such as Spain (CE Articles 148 and 149).

<sup>13</sup> Still today, this expansion is working. In September 2017, for example, Seaska expanded its high school to include vocational training.

<sup>14</sup> Considering that Ikastolen Elkartea is located in Spain, and that there is no specific regulation of education in Basque in France, we are going to limit ourselves, for the purpose of this paper to the situation in Hegoalde.

However, the most important Article of the Constitution, concerning the official status of languages in Spain remains the Article 3. This Article underlines the following:

1. Castilian 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 Autonomous Communities in accordance with their Statutes.
3. The wealth of the different language modalities of Spain is a cultural heritage which shall be the object of special respect and protection.

This Article implies three main things. Firstly, it is expressly written that the official language of the State is Castilian. This matches with the unitarian tradition of the Spanish state. This implies that the state institutions will continue to operate in one and only language. Secondly, this Article brings the recognition of the official status of the rest of Spanish languages, if they conform to *Leyes estatutarias*. Finally, it also puts on the table the principle of protection and development of the Spanish linguistic patrimony.

If one goes back to the second implication of the Article 3 just mentioned above, one should note that this recognition gives a formal bilingualism at the regional level in certain autonomous communities. Regional or minority languages have been given official status (so-called "co-official languages") within their geographical areas, in addition to the official language of the state. As reminded by Arzoz (2008, p. 83), "unlike some federal states, under Spanish constitutional law and under language legislation passed by autonomous communities, all authorities located in a bilingual territory are deemed to abide by the co-official status of the respective language: the co-official status has territorial character". (SSTC 82/1986, 214/1989, 56/1990). Therefore, as Arzoz (2008, p. 83) underlines, "the linguistic model and the territorial model are intrinsically linked".

In fact, the autonomous communities are the ones generally designated to legislate about the protection of co-official languages. This power to legislate is known as the horizontal character (Arzoz 2008, p. 83): on the one hand, "public authorities (...) located in a bilingual autonomous community are obliged to comply with the language legislation and subordinate legislation in accordance with their respective powers and duties"; and on the other hand, "the specific competencies of the central government cannot hamper or restrict the exercise of that legislative power" (Arzoz 2008, p. 83). This is why it can be said, for the case of Spain, that there is a legal institutionalisation of linguistic groups. This implies the existence of six recognised bilingual territories<sup>15</sup> in Spain, within a majority of Spanish-speaking territory. In these officially unilingual autonomous communities, speakers of other languages than Castilian do not enjoy the same right to linguistic protection as the already mentioned six territories. However, each unilingual autonomous community can regulate about the use of those languages.

Since we are working with the example of education in Basque, we must discuss the legal status of Euskara in two autonomous communities: Basque Country and Navarre.

### 2.3.2. Legal status of Basque in the autonomous community of Basque Country

It must be underlined that Basque remains a minority language, even inside the Basque autonomous community, where it is co-official. This implies a complex reality for Euskara. Urrutia Libarona (2006, p. 417) even adds that "Basque coexists with two of the most powerful languages of the earth: French in the north

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<sup>15</sup> These territories are the autonomous communities of the Basque Country, Balearic Islands, Catalonia, Galicia, Navarre and Valencia.

side of the Pyrenees, and Spanish in the South".<sup>16</sup> Besides, the legal status of the Basque language is heterogeneous with a complete lack of formal recognition in Iparralde, a ternary division of linguistic areas in Navarre and a co-official status in the autonomous community of the Basque Country. Therefore, there are five different statuses for one language.

Concerning the autonomous community of the Basque Country, Basque is co-official together with Castilian language. This implies also that Euskara is in the languages that are recognised in the Constitution of Spain (CE) of 1978. For this autonomous community, the law that organises the use of Basque is the Ley 10/1982 of 24 November about the basic normalisation of the use of Basque. However, the main text that deals with Euskara is the Autonomy statute of the Basque Country, approved by the Ley Orgánica 3/1979, of December 18, in its Articles 6 and 35 (Urrutia Libarona 2006). The article 6<sup>17</sup> states that:

1. Basque, the language of the Basque people, will have, as the Castilian, the characteristic of being an official language of Euskadi, and all its inhabitants have the right to know and use both languages.
2. The common institutions of the autonomous community, taking into account the sociolinguistic diversity of the Basque Country, will guarantee the use of both languages, ruling its official character, and will arbitrate and regulate the measures and means which are necessary to ensure its knowledge.
3. No one shall be discriminated against on grounds of language
4. The Royal Academy of the Basque language - Euskaltzaindia is the consultive official institution with respect to Euskera.
5. Euskera being patrimony of other basque territories and communities, in addition to other links and reciprocation that academic and cultural institutions can maintain, the autonomous community of the Basque Country may ask the Spanish Government to conclude and present, where appropriate, to the Cortes Generales,<sup>18</sup> for its authorisation, treaties or conventions which will allow the establishment of cultural relations with states where those territories and communities are integrated or live, in order to protect and promote Euskera.

The Article 6 of the Statute of Guernica implies five principal things. First of all, this Article states a shared official status between Castilian and Basque. This principle was also declared, as Urrutia Libarona (2006) remembers, in the ruling 337/1994 of the Constitutional Court of Spain in December 23 (STC 337/1994). Here, the constitutional judges underlined that, languages who share an official status "but also a *co-living* of those two languages".

This Article also implies linguistic rights and duties. The author (Urrutia Libarona 2006) recalls that a language is not merely a formal element of the legal act; it is also a communication mechanism. This makes the declaration of official status of Basque give rights to citizens. Indeed, the Guernica statute gives a collective dimension to Euskara, and not merely an individual dimension (that is what is usually obtained by a declaration of double official status of a language).

Inside the Article 6, one can find the principle of non-discrimination stated in the paragraph 3, which is necessary concerning a minority language. Finally, this article gives the right to all the citizens of the Basque autonomous community of knowing and using both official languages. As mentioned earlier, Basque language has various legal statuses. Taking into consideration that in Iparralde there is absolutely no formal and official recognition of Euskara, I am going to focus on the third example, which is the particular case of the autonomous community of Navarre.

<sup>16</sup> Translation by the author.

<sup>17</sup> Translation by the author.

<sup>18</sup> This organ appears in the Article 66.1 of the Spanish Constitution (CE) of 1978. This organ is a bicameral parliament of Spain, composed by the Congress of Deputies and the Senate.

### 2.3.3. Legal status of Basque in the autonomous community of Navarre

Even if Basque language is nowadays a minority language in Navarre, it was spoken by the majority not so long ago Arzoz (2006, p. 387). He adds: "If today it is a minority it is because there has been a long historical process of linguistic substitution, with the own complexity of all long historical processes".

The particularity of the autonomous community of Navarre is that it is divided into three linguistic divisions: the Basque-speaking area (located in the North), the "mixed" area (in the centre of Navarre) and the non-Basque-speaking area (located in the South). Arzoz (2008) also highlights that this linguistic zoning is highly controversial. Indeed, "the linguistic zoning has amounted to confining the official status that Basque must be constitutionally given to the narrowest possible territory and, therefore, leaving the most populated areas of the autonomous community outside the area in which the language has official status" (p.94).

Concerning the status of Basque, the Statute of Autonomy of Navarre states that Euskara has an official status only "in the Basque-speaking areas of Navarre" (Article 9.2). These areas are regulated by the Basque Language act. According to Arzoz (2008) "for areas other than the 'Basque-speaking zone', the Basque Language Act does not formulate citizens' rights and the authorities' duties unambiguously in legal terms, but intentionally leaves a huge discretion to the authorities of the day to determine politically the content of their obligations" (Arzoz 2008, p. 95). If I relate this with what I have mentioned earlier – i.e. that the linguistic zoning is highly controversial – I can imagine where the difficulties start for Basque language's recognition in the territory of Navarre.

The official status of the Basque language has a direct impact in the implementation of Basque schooling. Concerning my focus point, which is the transfrontier cooperation, I have seen that, firstly, Euskara is spoken in both sides. Then, concerning the official status of the Basque needed in one side of the border, I analysed that both in the autonomous community of the Basque Country and Navarre (partly) it is fulfilled. Finally, I need to focus on the need of cooperation.

Once the situation of France and Spain as signatory states of the Language Charter has been established, we need to contrast the example of Ikastolen Elkartea with the transfrontier cooperation contained in the Language Charter.

Once the general regulation in Spain and Basque Autonomous Community and Navarre concerning languages has been unwrapped, the general regulation of education in Basque should also be evoked.

### 2.3.4. General regulation of education in Basque in the autonomous communities of the Basque Country and Navarre

Concerning the autonomous community of the Basque Country,<sup>19</sup> there are two main laws relative to education: the basic normalisation of the use of Basque (Ley 10/1982) and the law of the Basque Public School (Ley 1/1993). The basic principle in this autonomous community is the freedom of choice between three models: model A refers to the schooling in Castilian and where Basque is taught as another subject; model B refers to the schooling language are both languages (Basque and Castilian); and model D refers to the schooling in Basque. This freedom of choice between different models is held in the Article 15 of the Law of basic normalisation of the use of Basque. It must be noted that, according to Urrutia Libarona (2006) the recognition of having the freedom of choice between different linguistic models causes at the empowerment of some models and decline of others at the same time. For instance, the social demand of the D model has been constantly increasing, while the demand of the A model have been declining. This decline of the demand of the A model is linked to the "social awareness that the D model

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<sup>19</sup> Mezo (2008) makes interesting analysis about this topic.

guarantees the most equilibrated levels of knowledge of the official languages" (Urrutia Libarona 2006, p.440).<sup>20</sup>

Concerning the autonomous community of Navarre, I am going to focus on the Ley Foral del 18/1986 del Euskera (Foral Law<sup>21</sup> of Basque of 1986). Indeed, as reminded by Arzoz (2006), in Navarre there is not a Foral law that actually regulates the educative system. The only provisions that actually talk about the use of Basque in education are found in the already mentioned Foral Law of Basque. These provisions are developed in the Decreto Foral (Foral Decree) 159/1988, of 19 May, which regulates the incorporation and use of Basque in the non-university education.

Once the preliminary contextualisation of Ikastolen Elkartea, and the general regulations around Basque language and education has been established, we should move on to the specific text protecting Euskara: the European Language Charter.

### 3. Council of Europe and the protection of regional or minority languages

The right to education has been widely protected under international public law. Although its protection is also extended to minorities and linguistic minorities, we are going to focus on the Language Charter, since it is the only treaty devoted to the protection of regional or minority languages. Besides, since my focus point being the Basque schooling case, we need to analyse two signatory states: France and Spain.

#### 3.1. European Charter for Regional or Minority Languages: an introduction

The European Language Charter is a treaty created by the Council of Europe in 1992.<sup>22</sup> One of the particularities of this treaty is that it is a binding text, with a non-binding implementation through the monitoring mechanism. In addition, another particularity of the Language Charter is to actively promote and protect regional or minority languages. In fact, the articles contained in the text of the Language Charter are precise and demand active participation of signatory States on the matter; or, in De Varennes's (2008, p. 33) words, a "proactive interpretation and implementation". Concerning Basque language, two signatory states of the Language Charter are concerned: France and Spain.

#### 3.2. Signatory states: case of France

The Fifth Republic of France signed the Language Charter in May 1999. However, as it is well known, it has not yet ratified the Charter. The weight of the 1789 Revolution and creation of the French Nation already supposes an obstacle to the recognition of regional or minority languages' rights. Indeed, the Fifth Republic is embedded in the revolutionary heritage of individualism and rejection of communitarianism, not allowing the slightest reference to particularism.

Apart from the particular republican tradition of France, the problem of the non-ratification of the Charter by France starts with the Constitutional amendment of the Article 2 in 1992 of the French Constitution. In fact, this amendment concerned the Article 2 of the French Constitution, concerning the "language of the Republic", when trying to limit the strong influence that American English had in the French

<sup>20</sup> Translation by the author.

<sup>21</sup> *Foral law*: in Spanish, called Ley foral. This particular law has its origins in the *fueros*, which were legal statuses, which could be applied in a particular territory. They have their origin in the Middle Ages, where usually the King gave privileges of regulating in a local level to a territory. Nowadays in Spain, the autonomous communities of Navarre and Basque Country still keep this particular devolution of powers.

<sup>22</sup> In May 2017, there are 25 ratifications or accessions, and eight signatures not followed by ratifications of the Language Charter.

language. Therefore, the French Parliament approved the following Article 2 (Constitution de la République française 1958):

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, by the people and for the people.

The second important date concerning the Language Charter and France is 1999. Indeed, in 1999, three ministerial reports concluded that the Charter was compatible with the Constitution. Therefore, on May 7, France signed the Language Charter. However, the president, using Article 54, asked the Constitutional Council if a constitutional amendment was necessary in order to ratify the Charter because of the principles contained in the Constitution of 1958. Therefore, on June, the Constitutional Council stated the following:

In granting special rights to "groups" of speakers of regional or minority languages within "territories" where such languages are used, [the Charter] infringes the Constitutional principles of the indivisibility of the Republic, equality before law and the unicity of the French people. (99-412 DC, 1999)

Here, the Constitutional Council emphasises the two main axes of the French Constitutional tradition: citizens are equal and the nation is indivisible in terms not only of territory but also in terms of population. However, it is expressly stated (as commented above) that the Language Charter does not give any group rights to the regional or minority language speakers. Indeed, even the Article 5 underlines that the territorial integrity and unity of the signatory State remains intact and is protected under the Charter. Therefore, the decision of the Constitutional Council is highly contestable in the sense that the aim of the Charter was not understood. Speaking of this contestability, Trifunovska (2010, p. 77) adds: "the Charter does not intend to create competition and antagonism between the official and regional or minority languages, but adopts an intercultural and multilingual approach". Thus, the decision of the French Constitutional Council did not allow the beneficial impact that the Language Charter could have for the regional or minority languages in France.

The question of regional or minority languages in France has always been a taboo, even though there are about 75 in total.<sup>23</sup> Indeed, as reminded by Gilbert and Keane (2016, p. 884):

Traditionally, France has been against minority rights. French authorities have consistently rejected the use of the term "minorities", and have banned any form of special measures for national, racial, ethnic, religious or linguistic groups.

Therefore, the first time that a French government was going to take a positive action against the taboo of minorities, the Constitutional Council intervened to stop it in the name of the French republican traditional understanding of "equality". Various bodies have since then reminded repeatedly the need to change the French approach to minorities (Gilbert and Keane 2016).

Even today, the question of regional or minority languages is still under discussion in France, when the ratification of the Language Charter could have avoided the blocking of the situation. For instance in 2014, a bill was adopted in order to allow the ratification of the Language Charter but it was not discussed in the Senate.

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<sup>23</sup> The scope of protection of the European Charter for Regional or Minority Languages would be applied to 9 or 10 of these languages, located in metropolitan France (i.e. the European territory of France).

More recently, the discussions around the Charter remain in the background, while new steps are taking under the umbrella of domestic law in France, as it is show by the new bill proposed by the Minister Le Roux. After the text (Texte adopté n° 897, 2017) being adopted by the National Assembly on 31st January 2017, the text is now in the hands of the Senate, for a first reading.

Noting the difficulties posed for the adoption of European protection on regional or minority languages, De Witte (2014, p. 40) adds: “the potential impact of the new European minority instruments adopted in the 1990s was not felt because France did not ratify either the Framework Convention or the Charter of Languages”. Since France is not bound by the obligations of the Charter, we must turn towards the Kingdom of Spain in order to analyse the protection of Euskara.

### *3.2. Signatory states: case of Spain*

Pérez Medina (2010, p. 105) explains: “[I]n Europe, Spain is probably the country with the highest number of minority-language speakers and the greatest degree of linguistic complexity”. Concerning the Language Charter, the Kingdom of Spain signed it on November 5, 1992 and ratified it on February 2001. In 2005 the initial monitoring cycle ended. It should be pointed out that Article 3 (3) of the Constitution of 1978 already protected regional languages of Spain. The adoption of the Language Charter, therefore, has reinforced this protection.

The political division of Spain into seventeen autonomous communities contributes to a mentality of protection of regional or minority languages. Indeed, the devolution of constitutional power towards the different Autonomous Communities plays a fundamental role in linguistic minority protection in Spain. When signing the Charter, Spain extended the protection of the Charter to the six autonomous communities that contain a co-official language. These autonomous communities are the Basque Country, Catalonia, Galicia, Valencia, Navarre and the Balearic Islands. Therefore, the protection of the Charter only applies inside the borders defined by the political division of Spain.

Arzoz (2008, pp. 84-86) explains how the majority of Autonomous Communities containing a regional or minority language have declared it “vernacular” inside their territory, and that “this symbolic recognition may have far-reaching practical effects, which go from justifying special promotion through to grounding a sort of priority in the actual language use of the autonomous authorities”. This recognition means, therefore, that the central government cannot intervene legislatively in the field of the protected languages in the above-mentioned six autonomous communities. In other words, Spain has no general regulation on languages. This has led to what might be called a territorial thinking of language, which brings the side effects of a non-protection of co-official languages in non-bilingual territories of Spain. In fact, the citizens of autonomous communities that do not have a co-official language are not able to enjoy their linguistic rights before institutions or authorities of the central state, or in locations where Castilian is the only official language. This is explained by Arzoz (2008, p. 86): “[the central state] has devoted itself to the protection and promotion of the use and the role of Castilian, both domestically and internationally”.

This territorial thinking of language underlines the need, for Spain, to work on creating a consciousness about the existing linguistic diversity. Agirrezkuenaga Zigorruga (2006, p. 114) states: “[I]t is obvious that, in Spain the objective from the perspective of the national politics shines from its absence”.<sup>24</sup> While talking about the conclusions of the Committee of Experts of April 8th 2005, about the application of the Charter in Spain, he notes this absence of collective consciousness about the linguistic diversity in Spain. According to him (Agirrezkuenaga Zigorruga 2006), Spanish media pay little attention to linguistic

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<sup>24</sup> Translation by the author.

diversity. He also underlines that the mentioned conclusions highlight that the Spanish citizens who only speak the majority language are unaware that Spain is a multilingual country.

However, according to Arzoz (2008, p. 88), "what is beyond doubt is that the [Charter] creates obligations on the part of Spain". Indeed, if we refer to the Spanish Constitution, we can see, in the Article 96.1 the following stated:

Validly concluded international treaties once officially published in Spain shall constitute part of the internal legal order. Their provisions may only be abolished, modified, or suspended in the manner provided for in the treaties themselves or in accordance with general norms of international law.

Thus, this implies the Language Charter being incorporated inside the Spanish legal order. As this author reminds us (Arzoz 2008), the Charter possesses a superior rank to the domestic law and an inferior one to the Constitution. Indeed, looking at the order of the Constitutional Court of Spain 16/2005, paragraph 5, one can say that the Language Charter brings tools of interpretation on the topic of the official status of languages in Spain, apart from Castilian. This has tremendous implications for the Spanish state, which has to guarantee the protection of the Language Charter.

As I have discussed previously, the aim of the Charter is to protect regional or minority languages and, concerning Basque language, I have focused on France and Spain and their relationship towards the Charter. However, I am going to go a step further and locate the discussion around the transfrontier cooperation under the Article 14.

#### **4. The European Charter for Regional or Minority Languages and Ikastolen Elkartea**

As mentioned earlier, the Language Charter is part of the treaties belonging to the Council of Europe. Indeed, the Council of Europe adopts treaties with the aim of "the maintenance and further realisation of human rights and fundamental freedoms", as it is stated in Article 1.b. of the Statute of the Council of Europe (1949).

However, creating a treaty in order to protect linguistic minorities was a big step forward, and collective minority rights were a difficult concept in to perceive in the 1980s (Gramstad 2010). This difficulty led the text of the Charter to use cultural heritage as the point of departure for its scope of protection. The Charter thus legally protects regional or minority languages as cultural pillars, rather than as minority groups.

The Language Charter is also a tool created to answer a variety of situations. Each state has different linguistic or regional minority configurations and also different ways to approach them. Adopting the Language Charter implies an active attitude from signatory states in order to slow the decline of the regional or minority languages concerned.

However, one of the main elements of the Language Charter is the discretion that it leaves to the signatory states. Indeed, the Charter leaves discretion to signatory states to provide a list of the languages they want to protect. Therefore, the states define, interpret and apply the Charter with wide flexibility. This flexibility is one of the recurrent criticisms made to the Charter. As Parry (2010, p.338) underlines concerning this controversy, "it potentially leaves minority language policy at the mercy of political expediency".

The Language Charter (1992) remains, however, a useful tool for the regional or minority languages protected by it. Concerning our case of Ikastolen Elkartea and schooling in Basque language, this text also brings some level of protection in education.

In fact, Article 7 (3) (*Idem*) articulates the promotion of the respect, understanding and tolerance towards the national regional or minority languages as an objective of education. Linked to this, Article 8 (g) underlines that parties should “make arrangements to ensure the teaching of the history and the culture which is reflected by the regional or minority language”. Therefore, education is explicitly protected in the European Language Charter.

One can see that the Language Charter protects education in Euskara for the case of Spain. However, this analysis is focused on Ikastolen Elkarte, not as one of the entities offering education in Basque language, but as a cooperative working in cross-border fashion. Therefore, the next step is going to be discussing the Language Charter (1992) and its Article 14, on transfrontier cooperation. In order to analyse the transfrontier cooperation under the Article 14, we are going to define this article and centre on the interpretation of the Committee of Experts.

#### 4.1. Definition of transfrontier cooperation under Article 14

As one can see, the Article 14 is devoted to transfrontier cooperation. According to Woehrling (2006, p. 233), “Article 14.a deals with agreements of a general character (...), Article 14.b concerns agreements which affect more particularly border regions”. This Article implies, at first glance, an active attitude of signatory states towards promoting cross-border cooperation in favour of regional or minority languages. However, we should take a closer look to the concrete meaning of this Article.

First, we have to underline that Article 14 goes together with Article 7.1i of the Charter, promoting transnational exchanges. Article 14 could be, in this sense, seen as a complement to the Article 7.1i fostering transnational exchanges in all fields. The Article 14 would, thus, give a linguistic connotation. Subparagraph a gives a general definition of exchanges expected to take in order to foster regional or minority languages. According to Pons Parera (2012, p. 498), setting explicit obligations of transfrontier cooperation for protection and development of regional or minority languages “must not be understood in an exclusive sense, given that Article 7.1i promotes transnational exchanges in all fields, so that other forms of co-operation (economic, inter-administrative, etc.) with linguistic implications can also be assessed within the Charter framework”.

Pons Parera (2012, p. 498) also underlines how the structure of subparagraph “b” of Article 14 differs from the subparagraph “a”. It also has a similar wording to Article 7.1i: “Article 14b first mentions the aim – the benefit of [regional or minority languages] – and then the undertaking to facilitate and/or promote transfrontier co-operation”. This would help regional and minority languages, which are located in two different states to see their language more effectively, protected via transfrontier cooperation. It appears as if the scope of the protection of this Article refers more to a transfrontier setting rather than to a transnational one (Pons Parera, 2012). However, it must be underlined that this Article 14.b keeps the protection of the established nation- state borders. Indeed, this author (Pons Parera 2012) explains how Article 14.b. avoids the use of the term “speakers”. She explains that this could be translated by the aim of not wanting to refer directly to ethnic minorities divided by frontiers. Indeed, this would go along with Article 5<sup>25</sup> of the Language Charter, and the will of the drafters of not to create any doubt on the inalterability of established state frontiers.

In addition, this subparagraph b also strikes the role of regional or local authorities for the transfrontier cooperation. This implies a decentralisation of power, or even a

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<sup>25</sup> Article 5 of European Charter for Regional or Minority Languages (1992): “Nothing in this Charter may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes of the Charter of the United Nations or other obligations under international law, including the principle of the sovereignty and territorial integrity of States.”

constitutional devolution in the Spanish case, in order to deal better with the transfrontier cooperation for the protection and development of a regional or minority language. This would, in a way, compensate for the lack of majority, in the capital, concerned by the issue of a particular regional or minority languages. However, this also implies a concern in the local or regional level about the transfrontier cooperation and protection and development of the regional or minority language. Thus, through this Article 14, states but also regional or local authorities are involved.

Furthermore, another important involvement – while reading or applying the Article 14 - is the involvement of social and cultural bodies. Indeed, this is an important level of transfrontier cooperation for the protection of regional or minority languages. According to Pons Parera (2012, p. 505), even if not specifically mentioned, these bodies have a crucial role in the transfrontier cooperation for fostering or protecting the regional or minority languages and “the Committee of Experts regards financial support for these bodies from the public authorities as a means of complying with Article 14b”.

In addition, the Committee of Experts leaves the implementation of this particular Article 14 quite free. I am going to analyse the interpretation of the Committee of Experts of this Article 14 in the light of effective application and implementation of the Charter by the signatory states. However, before moving forward, we should approach the monitoring mechanism of the Language Charter, which is the tool for an effective implementation of the text.

#### *4.2. Implementation of the Language Charter: the monitoring mechanism*

The Language Charter being a treaty it needs some sort of implementation. This implementation mechanism is known as the “monitoring mechanism”. This mechanism was established in order to assess how the Charter is implemented in the signatory states, with the Committee of Ministers having the authority to submit recommendations. The control by the monitoring mechanism operates in the following terms: each State party to the Charter must submit reports periodically (every three years) to the Secretary General. In these reports,<sup>26</sup> they must explain the policies and actions they have established to achieve the responsibilities they have under the Language Charter.

During the monitoring mechanism the Committee of Experts has the following role: (1) it examines the report provided by the state; (2) if there is any doubt on the text of the report, it sends questions to the State Party. (3) The Committee of Experts then visits the State concerned to meet the authorities, NGOs and any type of competent body, which might be useful in order to assess the application of the Charter. Then, (4) the Committee assesses other information provided by associations or bodies located legally in the concerned signatory state, who have an interest in the correct application of the Language Charter. Finally, (5) the Committee of Experts adopts an evaluation report, which includes recommendations – if necessary – to the Committee of Ministers, who will have additional recommendations<sup>27</sup> to address the State Party concerned by the report.

The last phase of the monitoring report concerns, therefore, the Committee of Ministers. Indeed, once the report of the Committee of Experts has reached the Committee of Ministers, the latter can decide to make recommendations to the State concerned. The State concerned will then take action to comply to the Charter more effectively by aligning their policies, legislation or practice with the text of the Language Charter.

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<sup>26</sup> The reports are published.

<sup>27</sup> These recommendations are not binding.

The understanding of the monitoring mechanism is essential to the understanding of the interpretation of the Committee of Experts on the Article 14 on transfrontier cooperation. Indeed, once we discuss where the Committee of Experts' role comes from, and what function it has, we can move forward and elaborate on their interpretation of transfrontier cooperation.

#### *4.3. Interpretation of transfrontier cooperation by the Committee of Experts*

Taking into account the monitoring mechanism, we can notice that a vast amount of information is provided by the states to the Committee of Experts. This body has to assess how the Charter is implemented. However, the implementation of the types of measures and instruments through which transfrontier cooperation is conducted were left open in the Language Charter. Therefore, using the reports as a starting point, the Committee of Experts has established some criteria that should be used in order to apply Article 14. Indeed, the Committee of Experts has established two criteria. Pons Parera (2012) explains this interpretation.

The first criterion is a formal requirement: member States to the Language Charter must adopt agreements or approve rules, or there must be some existence of a body for the implementation of the transfrontier cooperation. This first requisite comes as obvious, but it is still necessary and should be, therefore reminded. Thus, according to the Committee of Experts, in order to apply correctly Article 14, this formal requirement should be respected.

Secondly, the Committee of Experts has established a substantive or qualitative criterion. This requisite involves that measures adopted on the area of the previous formal requirement should effectively promote contacts between speakers of the regional or minority languages. This criterion also includes to efficiently fomenting transfrontier cooperation with the aim of benefitting the regional or minority languages. Pons Parera (2012, p.506) underlines that this criteria of substantive compliance may vary, but "what happens most commonly is that proof of the beneficial effects on languages is required when there are doubts about the relevance and practical application of the formal measures cited by states". This implies an openness of Article 14 in order to facilitate the transfrontier cooperation for the protection of a regional or minority language.

As a reminder, I must say that Article 14.a entails cooperation between state authorities, whereas Article 14.b takes into account the cooperation at a sub-state level. Thus, two options of cooperation are faced, and not necessarily concerning agreements at a nation-state level.

Finally, I need to refer to the recommendations of good practice made by the Committee of Experts while looking to the compliance of the Article 14.

- 1 The responsibility of the cooperation lies with the different levels of government of different states (Pons Parera 2012, p. 502). This implies public and private bodies in the field of language.
- 2 The Committee of Experts also strikes the need of formalising transfrontier cooperation.
- 3 They also encourage the institutionalisation of transfrontier cooperation. This is a practice that brings positive effects on the protection and development of regional or minority languages.
- 4 Financial involvement in fostering cooperation.
- 5 Finally, and most importantly, the author notes (Pons Parera 2012, p. 513):

through the monitoring activity of the Committee of Experts the effects of the cooperation requirements of Article 14 are projected on to countries which have not ratified the Charter but which are located within the sphere of influence of the signatory countries. This occurs when the effectiveness and binding nature of the undertakings accepted by the parties are recognised regardless of whether the

territories in which the same language is spoken belong to other states parties or not.

Sticking to the last point (point 5), one can imagine that the principal aim of the Language Charter is protected and underlined. Pons Parera (2012, p. 513) calls this the “virtuous circle”, where “by the application of the Charter helps to spread throughout the European continent (...), an awareness of the value, and a positive vision, of transfrontier exchanges relating to languages”.

Once we have understood the importance of the Language Charter for the protection of Basque language, and that we have developed the understanding of an effective transfrontier cooperation located in Article 14 by the Committee of Experts, we should turn towards an analysis in practice of this phenomenon through the example of Ikastolen Elkartea.

Indeed, since as described earlier, Ikastolen Elkartea works in both sides of the Franco-Spanish border. Taking into consideration the Committee of Expert's analysis of the Article 14 of the Language Charter, I am going to discuss the three elements of compliance needed to apply the protection of the Ikastolas in Iparralde. These three elements are the geographical location, the language and the transfrontier cooperation.

#### *4.4. Ikastolen Elkartea and the requirements of Article 14*

One of the requirements for the transfrontier cooperation is the location. Concerning the location of the Ikastolas and Basques, there is no doubt that the geographical location needed is fulfilled.

Another requirement of the Committee of Experts, according to Pons Parera (2012) concerns the identity of the language and its official status. First, one needs to take into consideration the linguistic situation of Basque language. According to her, there are a variety of transfrontier linguistic situations. Indeed, the author (Pons Parera 2012) explains different statuses:

- (1) a regional or minority language in one country which is the same as the official and majority language of another state party to the Charter,
- (2) regional or minority languages which are the same as the official language of a state which is a party to the Charter,
- (3) a language which is an official language in two signatory states of the Charter,
- (4) and regional or minority languages which are not the official or national language of any state.

Euskara could be classified in the last category, knowing that there is not an expressly written recognition of this language neither in the Spanish Constitution of 1978, nor in the French Constitution of 1958. However, focusing on the case of Spain, one realises that there is a certain official status for the Basque language in certain areas. This would let us think, that indeed, Euskara has a mixed linguistic situation being at the same time a regional or minority language that is not the official or national language of any country and an regional or minority language that is the official language in a country (in some areas of Spain). Referring to our previous analysis, it is worth noting that in the autonomous community of the Basque Country, Euskara has the same official status as Spanish. In Navarre, however, we noted that in some areas Basque language was also co-official.

The official status of the Basque language has a direct impact in the implementation of Basque schooling. In fact, concerning my focus point, namely transfrontier cooperation, I have seen that, firstly, Euskara is spoken in both sides. Secondly, concerning the official status of the Basque needed in one side of the border, this requirement is fulfilled in the autonomous community of the Basque Country (fully) and in Navarre (partly). Finally, I need to focus on the need of cooperation.

#### 4.4.1. Ikastolen Elkarte as transfrontier cooperation: an introduction

In order to proceed to the analysis of the Ikastolen Elkarte cooperative under the light of transfrontier cooperation, we must, firstly, understand how it works, and then, confront it to Article 14 of the European Charter for Regional or Minority Languages.

An Ikastola is, according to Etxezarreta, a Basque self-management of education. This means that the schooling model of Ikastola offers an alternative to religious private schools and to the public school. The Ikastolas are first, secular; they do not have a religious attachment. Secondly, and most importantly, Ikastolas are self-managed. This specificity is truly characteristic of these schools: since the beginning by the creation of the first Ikastolas by parents, they still keep the main power in each school. They work in a structure of direct democracy, in order to make parents entire part of the education of their children and thus, of the school. Thirdly, and related to the second point, it must be underlined that each Ikastola preserves its own independence. Indeed, the Ikastolen Elkarte is a mere result of the devolution of power by Ikastolas. All the power emanates from them.

Each Ikastola delegates its power to the relevant regional federation (Seaska for the three regions of Iparralde, Gipuzkoa, Bizkaia, Araba or Nafarroa), which, then reunites into Ikastolen Elkarte to take common decisions (decisions about the schooling model they offer and about the sustainability of Ikastolas mainly). The decisions are taken by vote. Each reunion of Ikastolas of each region has a vote, and no decision can be taken without the unanimity. However, the Ikastolas of Navarre and Iparralde (reunited under Seaska) have more autonomy for the implementation of the decisions taken (how and when), because of the particular setting of these two areas. Indeed, Ikastolen Elkarte need to face three different administrations and two countries' rulings.

As I have already discussed, Ikastolen Elkarte has two main domains of decisions: the education model they propose and own, and the well being of Ikastolas. On the one hand, concerning their schooling proposal, Ikastolen Elkarte has a role of promoting research, creating original teaching materials and programs (they publish their own material such as text books, for example) and training teachers. They also have their own system of evaluation of teachers.

On the other hand, Ikastolen Elkarte has to maintain and promote the well being of the Ikastolas. This is obtained through three branches: the quantitative development of Ikastolas (development of the "school map", as they call it), keep and add public financing, maintain and decide upon the solidarity finance "box",<sup>28</sup> and negotiate labour agreements. Etxezarreta always underlines the independence of the Ikastolas and the importance they have for the well functioning of Ikastolen Elkarte and the Basque schooling. Since 2009, Ikastolen Elkarte has become a European Cooperative, which gives a transfrontier recognition to the Basque schools, but it is important to notice that, each Ikastola still has its own legal personality. The big majority of them are constituted under the framework of a cooperative.

The schooling model of Ikastola is also different from the other types of schools available. I already mentioned the duality of school offer usually found in western societies: either religious, either state school. Ikastola has, due to its particular way of organising itself, a variety of choice towards what, how and when to teach. It is true Ikastolas follow an official program in order to receive public founding. This would affect, in a way, what they teach, but they still have freedom to add some specific topics or materials (and also when and how to teach them). Being inside

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<sup>28</sup> In Basque language: *Elkartasun Kutxa*. This box is a solidarity engagement between all the Ikastolas that is collected by Ikastolen Elkarte in order to redistribute to Ikastolas that most need the money. Each Ikastola, depending on the number of pupils they have, gives an amount to this box. This money can be used to renovate some buildings, or to promote more Ikastolas in one area.

the official schooling program framework also provides the opportunity to have official recognition of exams and access to universities and diplomas. Ikastolen Elkartea provides self-made materials and teaching programs, which includes the official program, but also develops other areas such as the study of the environment located near to such or such Ikastola or the history of a particular area where the Ikastola is located. The approach to the schooling is more individual, each Ikastola having its own freedom to adapt programs to its particularities.

Ikastolas are not only closed to Basque speaking parents who want to send their children to this particular schools, they are opened to everybody, Basque-speaker or not. In the case of Hegoalde, a particular rise has been noticed in the number of children coming from foreign cultures and languages. In Iparralde, the majority of parents of the schools located in the seaboard areas are non-bilingual. These parents speak only French, but they want their children to learn Basque. Etcheberry also explains that, in the majority of these cases, the grandparents of these children do speak Basque, but did not transmit it to their children because of the weight of shame. These children, being now parents, do want recover this part of their identity, at least, for the future generation of the family. I perceive that combining this model of education and the teaching in Basque language gives to the parents and children a sense of community.

Once we have understood how the European cooperative of Ikastolen Elkartea works, we should confront it to Article 14 of the Language Charter, concerning transfrontier cooperation.

#### 4.4.2. Ikastolen Elkartea as effective transfrontier cooperation

Concerning transfrontier cooperation, I have seen in the scheme of the cooperative organisation of Ikastolen Elkartea that the decision-making is common, for both sides of the border. The constitution of the federation into a European Cooperative already shows a transfrontier cooperation that is officially recognised inside the EU legal system. Ikastolen Elkartea takes decisions concerning the schooling offer or model and concerning the well being of Ikastolas. They are taken unanimously with the participation of the representatives of each region of schools.<sup>29</sup>

Concerning the funding, although the Ikastolas receive public founding from either sides of the border and different autonomous communities, they also have a conjoint solidarity box which allows the subsistence of Ikastolas independently from the willing of the public institutions to found them or not. Usually public institutions give funding to Ikastolas, but in some areas or regions, everyone can see how complicated the situation can be. In Navarre or Iparralde, for example, the legal precariousness for the first and legal insecurity for the second, that Ikastolas must face, make some events happen that can really alter the good functioning. Therefore, the financial solidarity between Ikastolas, held and distributed by Ikastolen Elkartea, is necessary for the subsisting of Ikastolas and its way of functioning.

Indeed, one can say solidarity is intrinsic to Ikastolas. Apart from public and solidarity funding, events are highly important for the well being of the Ikastolas' economy. There also are annual parties for each region of schools (Araba Euskaraz, Nafarroa Oinez, Kilometroak, Herri Urrats and Ibilaldia).<sup>30</sup> Here, another type of transfrontier cooperation is seen: social or community solidarity. One can see that during the organisation of the event, Ikastolen Elkartea coordinates Ikastolas together in order to prepare the parties and also to spread the word. Indeed, this

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<sup>29</sup> I must remind that I differentiate regions of schools from regions of the Basque Country, because the regions Lapurdi, Baxe-Nafarroa and Zuberoa are all united in Seaska. Indeed, Seaska represents the Ikastolas of the three regions of the Northern Basque Country.

<sup>30</sup> During these annual parties, each region of schools raises funds for one particular school. This implies that, each year, one school organises the party that contains concerts, food stands, activities and games for children...

type of event does not work without solidarity. Parents - who are the core of Ikastolas - and Ikastolen Elkartea work together either by organising these events or by assisting to them.

Another example of Ikastolen Elkartea being based on the transfrontier cooperation is the workers working in a transfrontier way. Indeed, while talking with Etcheberry, he explained, that some of his colleagues had to work in both offices i.e. between the head office of the Ikastolen Elkartea in Donostia-San Sebastián and the head office of Seaska. The head of Seaska is also expected to visit monthly the headquarters of Ikastolen Elkartea in Donostia-San Sebastian. This implied a transfrontier cooperation of workers. One can also mention the student's exchanges between ikastolas from different regions. Finally, one must not forget to mention the Protocol of cooperation between the region of Aquitaine, the autonomous community of the Basque Country and Navarre of 1992 (Resolución 3/1998). Although Aquitaine does not constitute the region of Iparralde, it contains inside its administrative borders the region of Northern Basque Country. This comes to underline the transfrontier cooperation already existing in an example like Ikastolen Elkartea.

According to Etxezarreta, Ikastolen Elkartea has been an active organism for transfrontier cooperation for the whole geographical area of the Basque Country in favor of the Basque language. Indeed, Ikastolen Elkartea has made possible the reunion of the Basque citizen in favor of the Basque language in schools. It has been a bridge showing the imaginary of Basque language and culture in a real way. Ikastolen Elkartea has also shown an effective way of understanding the approach to Basque language, culture and also education.

## 5. Concluding remarks

The right to education preserves a minority group's identity. In this particular case, this identity is even protected in a transfrontier way. Indeed, Ikastolen Elkartea complies with the elements that need to be considered as a transfrontier cooperation entity under the Article 14 of the Charter. Besides, as Dieter Beiter (2005, p. 42) claims, "cultural rights serve man's inherent right to identity. They empower individuals to assert their cultural identity". In fact, the social weight this European cooperative has in the Basque community makes it an indisputable actor of cultural identity of the Basque linguistic minority.

However, the question of identity and cultural rights is even more difficult if we translate them to a transfrontier setting. Indeed, concerning Euskara, we have to pay attention to which states we are facing. Indeed, the question of regional or minority languages in France "are eminently geopolitical in the sense that the linguistic claims lead calling into question of the traditional representations of France as an unitarian nation, or as a republic whose homogeneity guarantees the exercise of the individual liberties" (Loyer 2002, p.18).<sup>31</sup> Therefore, the Basque minority has even a harder task, because of the bi-national dimension of its territory. They do not only have to make rethink the organisation of the inside of France and Spain, but they also imply rethinking the organisation outside the borders of nation-states.

However, one cannot deny that reality is there and the way the majority think about the French and Spanish nation-states do not respond to it. Inside the borders of Spain, the problems of the division of the Basque regions into two autonomous regions (Basque Country and Navarre) are found; and inside the French borders, the problem of locating Iparralde inside a bigger administrative division (department) also appear.<sup>32</sup> Outside these borders, there are also apparent

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<sup>31</sup> Translation by the author.

<sup>32</sup> It must be said that recently (since January 2017) the French Basque Country enjoys its own territorial division, under the name of Collectivité territoriale Pays Basque.

struggles of both central governments to think about a Basque Country formed by regions located encroaching on their traditional nation's borders. Thus, Loyer (2002, p. 20) believes:

the uniformity of the French territory is a representation founded in a part of reality that we chose to foster. It has been a dogma during some times, for many reasons, and has been disseminated by the maps that appear in history and geography textbooks of national programs. Nowadays, it is relativized by other representations that can also become dogmas in the eyes of their supporters.<sup>33</sup>

Indeed, the issue concerning spaces and languages is really complex, and, as I have previously discussed, in the Basque Country, diversity is the watchword. This is why addressing this problems regionally seems more interesting rather than nationally. Besides, the bigger the geographical space we want to regulate, the more we neglect ethnic, linguistic, social, religious... diversities. This is where civil society and regional institutions intervene. Ikastolen Elkartea shows how the "regional or local thinking" helps linguistic minorities to organise in order to protect themselves better. The Basque linguistic minority has understood that going to national level has still never solved anything for their small communities (not in Spain, and even less in France). Ikastolen Elkartea is a reflection of that.

Besides, law is another construction of reality; it is not the truth, neither the right. It is a construction of what is right or wrong, who is an outsider or insider of a given society. Therefore, black letter law does not define everything and everybody. This applies even more when black letter law tries to regulate vast parts of territory where diverse citizens live.

Identity, and thus, minority or linguistic minority identity, is a product of different and various social, historical, economic and political factors, to which law can bring legitimacy or not. The question that must be asked here is who decides about this legitimacy. The paradox of minorities is that, because they are minorities, they usually are not part of the national policy makers.

As one could have deduced with the example of Ikastolen Elkartea, it is clearly demonstrated that state law is not exclusive. Indeed, other parallel forms of law do exist to the black letter law. Ikastolen Elkartea, shows that there is a gap between national black letter law and reality.

As Anne Griffiths (2002, p. 297), explains: "legal pluralism can only be said to exist where non-state law and state law coexist". Indeed, our case study shows how there is this precise situation, with Ikastolen Elkartea, where non-state law and state law coexist.

Sally Falk Moore gives five senses of pluralism in anthropology.<sup>34</sup> Concerning Ikastolen Elkartea, it complies with the following strong pluralism definition: "the way in which the state is interdigitated (internally and externally) with non-governmental, semi-autonomous social fields which generate their own (non-legal)

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<sup>33</sup> Translation by the author.

<sup>34</sup> Explained in Donovan 2007, pp.189-190. "Pluralism can refer to:

- 1 the way the state acknowledges diverse social fields within society and represents itself ideologically and organisationally in relation to them [weak pluralism];
- 2 the internal diversity of state administration, the multiple directions in which its official sub-parts struggle and compete for legal authority [e.g., when the executive branch challenges the legislative branch for ultimate authority];
- 3 the ways in which the state itself competes with other states in larger arena (the EU, for one instance), and with the world beyond that [international pluralism];
- 4 the way in which the state is interdigitated (internally and externally) with non-governmental, semi-autonomous social fields which generate their own (non-legal) obligatory norms to which they can induce or coerce compliance [strong pluralism]; and
- 5 the ways in which law may depend on the collaboration of non-state social fields for its implementation [reverse weak pluralism]."

obligatory norms to which they can induce or coerce compliance [strong pluralism]" (Donovan 2007, p. 189).

Indeed, Ikastolen Elkartea is a semi-autonomous social field. According to Anne Griffiths (2002, p. 302), "[Moore] developed the term "semi-autonomous social field" to indicate a social unit that generates and maintains its own norms". This author (Griffiths 2002, p. 302) also quotes Moore explaining the semi-autonomous social field, where semi-autonomous social fields:

can generate rules and customs and symbols internally, but that (...) is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded. The semi-autonomous social field has rule-making capacities, and the means to include or coerce compliance; but it is simultaneously set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance.

It can be said that Ikastolen Elkartea creates, since its beginning, its own rules, custom and symbols. However, this European cooperative is also tied to black letter law, either from regions or nations (France and Spain). This underlines the gap mentioned above, and greatly expressed by Anne Griffiths (2002, p. 303), "semi-autonomous social fields highlight the gap between state assertions of legality and empirical reality". She even goes further and uses the semi-autonomous social field creation of Moore to use it as a definition of law. As explained by Donovan (2007, p. 191), for her, "law is the self-regulation of a semi-autonomous social field".

This last definition of law enables me to link the definition of Etxezarreta of Ikastolen Elkartea. Indeed, he defined Ikastolen Elkartea as "a Basque self-managed education". After the analysis of this particular civil schooling system, I can underline that Ikastolen Elkartea is a semi-autonomous social field, and that, in this case, law would be the European Union that enables the regulation of this European cooperative.

It has to be remembered that Ikastolas were born in order to break with the pre-established order. They broke with the imposed homogeneity both by the French policies related to schooling, culture and linguistic politics, and by the policies of Franco of creating a unilateral common Spanish culture. Making an appropriation of Bourdieu's terms, Ikastolas were – and still are – problematic for central governments for two main reasons: firstly, they break with the habitus by creating a new way of schooling in the traditional dual framework (religious or public schooling). Secondly, they also create a new habitus in Basque society towards education by creating an education in Euskara but also by creating a self-managed education (creating manuals, programs, direct participation of parents...).

Working with Ikastolen Elkartea is also a way of breaking with the framed way of thinking about law or society inside the nation-state creation. Ikastolen Elkartea does not work inside one nation-state, neither in one designated society inside a nation's constitutional text. It also operates in a transnational and supranational way. Indeed, this association of Ikastolas is protected under EU law as a European cooperative and, as I have shown, works as an entity of transfrontier cooperation under the Article 14 of the Language Charter.

One must keep in mind that nation-states are also a creation. The imaginary of Ikastolen Elkartea is as valid as the imaginary of state-based schooling system. They both work and they both deserve having their own space.

Spain (especially in Navarre) and France have a sense of fear towards Ikastolas. Indeed, these schools create a social and cultural capital in a non-traditional way (traditional implying here, a unique pre-established cultural way i.e. in French or Spanish culture and education system). However the reality is out there, and this capital has been creating itself for decades now. Policy makers have to see now if they want this capital to be created with them and enriching the pre-existing settings, or against or in contradiction to them. The symbolic power of Ikastolas

has to be underlined here. Indeed, since the Ikastolas were offering education in Basque, in order to face this competition, public and also private schools had to integrate also Euskara to their program.

The study of the transfrontier cooperation by the example of Ikastolen Elkarte has brought the discussion about the flexible nature of law. I have discussed the protection of the right to education in international public law and its connection to the right of minorities and regional or minority languages. Focusing on the Language Charter helped us centre the problem of the Euskara as a regional or minority language. As part of the empowerment of children but also of a language, the study of a particular schooling system helped us dig into the transfrontier cooperation contained in the Article 14 of the Charter. I have also underlined the difficulties Ikastolen Elkarte faces, mainly because of the legal status of the Basque language. What Ikastolas claim is that embracing diversity is empowerment, denying it is not.

The identity of Basques mainly rests in Euskara and their culture. The European Language Charter offers an effective protection of linguistic rights and enables even transfrontier cooperation. Civil society can work even as a power force in democracy. However, although using the tool of the Charter, or even European Union law, it appears that Ikastolen Elkarte still carries the same issues for decades now, both in Navarre or Iparralde. Thus, legal recognition of languages seems a big condition for the effectiveness and further steps of Ikastolas; they need the help of law. Society needs to work together with law, to be backed up by law.

Loyer (2002, p.34) makes us keep in mind that "the legal status granted to a language is not only legal. It is a subjective opinion on it, which also reflects a state of social relations".<sup>35</sup> In the end, it can be said that either internationally or regionally, minority rights and regional or minority languages' rights are mainly protected. However, their protection will always rely upon politics. Law (either state-law or non-state law) is a tool used to protect rights, but for a full protection, as the example of the Ikastolen Elkarte shows, the use of politics is inevitable.

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