

The Catalan Question and the Spanish Constitutional Court

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The Catalan "problem" is an old one but, in the last years, it has returned with tremendous force. Most probably, the turning point is to be found in a [decision by the Spanish Constitutional Court in 2010](#) on the Statute of Autonomy of Catalonia of 2006. This Statute, which is an agreed law, was passed by the Catalan Parliament, subsequently amended and approved by the Spanish Parliament and, finally, ratified by the Catalan voters through a referendum. After its official publication, the Popular Party filed an appeal in front of the Constitutional Court.

That institution not only partly overruled the legal provisions provided by the new Statute but also changed the very way of understanding the role of statutes within the Spanish legal system. Against its own precedents, the Constitutional Court seemed to reject the constitutional role of the Statutes in developing the open territorial organization system established by our Fundamental Law. In fact, this openness is one of the values as well as one of the weaknesses of our system: the Spanish Constitution does not fix a unique and clear decentralised system; it established rules and procedures to be followed in order to achieve autonomy but, from that point, the Constitution was open. Moreover, for 30 years we have been teaching in the classrooms that both the Constitution and the Spanish Constitutional Court case law recognised a specific constitutional role of the Autonomous Statutes: to develop and to close the constitutional open system. Due to their specific constitutional relevance, the Statutes were considered as special laws, just beneath the Constitution. The decision of 2010 seemed to withdraw this "speciality" from the Autonomous Statutes and to set them as common Organic Law.

The judgment of the Constitutional Court was published on July 10, 2010. On the day after there was a massive demonstration in Barcelona to protest against the decision of the Court which was understood as an act of contempt against the will of the Catalan people expressed by its Parliament and a referendum. From that moment, on each September 11, the National Day of Catalonia, thousands have taken to the street to claim their citizenship of this Autonomous Community and to demand at least a new revised autonomy or, even, independence.

Some months later, the President of the Autonomous Government of Catalonia, MH Artur Mas, said that if he won the elections with a vast majority, he would begin the way towards holding a consultation on the political future of Catalonia. In the elections of November 2012, *Convergència i Unió*, the President's political coalition, lost 12 Seats in the Catalan Parliament but *Esquerra Republicana*, the traditional independentist party in Catalonia, became the second political force in the Catalan Parliament. These two parties, accompanied by other progressive forces of the Catalan Parliament, initiated negotiations in order to prepare the way to a popular consultation.

The key to the process was undoubtedly the lack of communication and understanding between the two concerned governments: the Spanish and Catalan. During many months, the government of Catalonia and the Catalan Parliament made repeated attempts to get the Central Government and Parliament to arrange for a referendum in Catalonia. Since all those attempts were unsuccessful, President Mas and the pro-consultation parties unilaterally agreed, in December 2013, to conduct a consultation in Catalonia, based on two questions: 1) "Do you want Catalonia to become a State? And, if yes, 2) Do you want Catalonia to be an independent State? ". They also agreed that this consultation would be held on November 9, 2014.

From this moment onwards, the only response from Government in Madrid has been "no" and "the consultation is unconstitutional". However, in Catalonia [the Advisory Council for the National Transitional](#) came up with a number of institutional studies on the different constitutional ways that could allow for the consultation in Catalonia to take place. These options have been systematically rejected by the Spanish Government and Congress. Meanwhile, the citizens have been the spectators of a dialogue between deafs. Instead of deflating the "*secessionist soufflé*", this has increasingly stressed the relationship between governments and generated

great discomfort among citizens.

In any case, in Catalonia the "procés" continued its way. On September 27, 2014 the new "[Law of popular consultations without referendum nature](#)" was published and on the same day President Mas signed the "Decree of Call" – just two months from the date fixed to hold the consultation. Within hours, both the Law and the Decree of call were challenged by the Spanish Government in front of the Constitutional Court with the consequence that the application of both rules was suspended automatically due to the power provided by the law to the Spanish Government to urge the suspension of the regional legislation affected by a constitutional appeal.

Appeals were declared admissible and, consequently, the rules were suspended by the Constitutional Court in less than 7 hours. The Court handed down two separate rulings in which, deviating from its normal behaviour at this stage of the proceedings, it established in detail the effects of the suspension. These decisions forced the Catalan Government to suspend the institutional promotional campaign for the consultation on November 9th that had been in the media only for a few hours (between the publication of the law and the suspension). However, in recent days the Government, after a first moment of refrain, has taken new actions and new decisions, such as appointing members for a Supervisory Board of the consultation process or launching an unprecedented [advertising campaign](#) stating that there is no institutional campaign on the consultation because of the suspension established by the Constitutional Court.

Last night we knew that a consultation gathering the [full set of democratic guarantees](#) will not take place on November 9. President Mas announced this morning that the aim now is to initiate a "process of citizens' participation" on November 9. It seems, also, that afterwards he might call for autonomous elections with a unique manifesto shared by the pro-consultation parties. From my point of view, it is now quite an impossible scenario. I may be wrong, of course.

Just to finish to final comments: whatever it happens we have to keep in mind that there hasn't been yet, neither in Catalonia nor, of course, in the rest of Spain, an institutional, pluralistic and public debate on the alternatives to the current situation and on the viability of an independent Catalonia.

The truth is that those who are in favour of the consultation – held with all the democratic guarantees – have felt very jealous of the process that preceded the referendum on independence in Scotland where both Governments, the Central and the Regional, had committed to a clear and comprehensive discussion, putting all the cards on the table, and were able to debate openly for over a year.

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