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The Control of the Activity of the Authorities of the Autonomous Communities in the Spanish Constitution

Keywords: Spain, Catalonia, Autonomous Communities, referendum, secession

Słowa kluczowe: Hiszpania, Katalonia, Wspólnota Autonomiczna, referendum, secesja

Abstract

The dramatic events taking place in 2017 resulted in an unprecedented intervention of the Government of the Kingdom of Spain in the duties of the authorities of the Autonomous Community of Catalonia. The procedure for the fulfilment of constitutional obligations of the authorities of one of the seventeen Autonomous Communities, that make up Spain, was introduced for the first time in history. The sources of this situation should be sought in the conflict between Barcelona and Madrid, which has been growing for a decade, and reached its peak with the Spanish Government's failure to recognize the independence referendum and the attempt to secede by the Catalan authorities. The situation showed the need to reform the Spanish constitutional system, in particular as regards the rights and obligations of Autonomous Communities.

Streszczenie

Kontrola działalności władz wspólnot autonomicznych w Konstytucji Hiszpanii

Dramatyczne wydarzenia mające miejsce 2017 r. spowodowały bezprecedensową interwencję rządu Królestwa Hiszpanii w działalność władz wspólnoty autonomicznej

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Katalonii. Procedura bezpośredniej kontroli działalności władz jednej z siedemnastu wspólnot autonomicznych, z których składa się Hiszpania została uruchomiona po raz pierwszy w historii. Źródła tego stanu należy szukać w konflikcie na linii Barcelona-Madryt narastającym od dekady, którego apogeum zostało osiągnięte wraz z nieuznaniem przez rząd hiszpański referendum niepodległościowego i próby dokonania secesji ze strony władz autonomii katalońskiej. Sytuacja wykazała konieczność reformy ustroju Hiszpanii, w szczególności w zakresie praw i obowiązków wspólnot terytorialnych.

I. Spain as a “State of Autonomies”

Very abundant literature on the subject thoroughly analyzes the unique system of the Kingdom of Spain, established by the 1978 Constitution. The Basic Law met the demands of local politicians calling for the creation of autonomous regions, similar to those existing in the period of the Second Republic (1931–1939). The democratic Constitution introduced after almost four decades of dictatorial rule by Francisco Franco provided for the creation of local autonomies in a general way, because at the stage of editing the text of the Constitution, the number and the boundaries of such regions were not yet known, and the shape and scope of competence of local governments. From the beginning, it was assumed that autonomous regions would be created in Catalonia, the Basque Country, probably also in Galicia, perhaps also in Andalusia and the island archipelagos (Canary Islands, Balearic Islands). As it turned out in the next few years after the Constitution was adopted, the entire territory of Spain was covered with autonomous communities, the final number of which reached 17.

This events were consistent with the provisions of the Constitution, although probably none of its creators supposed that the whole state would become a cluster of autonomous regions. In this way, a specific paradox arose. Spain is a unitary state, which is guaranteed by the Constitution, which at the same time has the hallmarks of federal states, consisting only

of autonomous units. The doctrine quickly began to call Spain “a state of autonomies”².

However, the unique nature of Spain’s constitutional system did not satisfy the radical politicians. On the one hand, supporters of a highly centralized state were sceptical about delegating very broad competences to local autonomous authorities, while on the other hand, regional nationalists sought to increase the prerogatives of the autonomous authorities, pointing to over-much wide competences, which were transferred to the exclusive disposal of central authorities in the Constitution.

It should be noted that in some regions, with strong traditions of political independence, the so-called peripheral nationalisms are very serious forces on the political scene, often achieving high results in both regional and national elections. This is particularly the case in the Basque Country, Catalonia, Galicia, as well as in Andalusia and the Canary Islands, regions with highest autonomous traditions. In some Autonomous Communities inclusive, regional parties dominated the political scene, winning elections, designating representatives for the state parliament and creating autonomous governments³.

At this point a reference to the party system that crystallized in Spain after the return of democracy should be done. The government usually rests in the hands of People’s Party (*Partido Popular*, PP) or Spanish Socialist Worker’s Party (*Partido Socialista Obrero Español*, PSOE). The first of them is a center-right party, definitely more conservative, and thus focused on strengthening central power, while respecting the achievements reached so far in the field of territorial autonomy rights. PP is reluctant to make concessions that are supposed to extend the prerogatives of the autonomous authorities. As a social democratic party, PSOE is more open to the dialogue with regional politicians on the scope of the rights of autonomous governments. Nevertheless, both parties that alternatively rule in Spain disagree a departure from the constitutional provisions that constitute the indivisibility of the state. Spain’s unitarianism, despite the deeply rooted traditions of regional self-determina-

² It happend already in the era of transformation, although before all autonomy was formed: P. Farias Garcia, *Breve historia constitucional de España 1808–1978*, Madrid 1981, p. 118.

³ M. Myśliwiec, *Pozycja partii regionalnych w systemie politycznym współczesnej Hiszpanii*, Katowice 2014.

tion is more a theoretical than practical matter, remains one of the flagship slogans of the two major political forces of the state.

On the other hand, regional nationalist parties are usually oriented towards dialogue and cooperation with central authorities rather than confrontations. The infamous exception was the ultra-radical ETA movement, which, by means of terrorist attacks, tried to force the government in Madrid to grant independence to the Basque Country. Importantly, ETA never had significant support among the Basques, enjoying only marginal society support⁴. Similarly, other regional parties with a fading separation from Spain have little support. A very dangerous precedent began to shape only in the middle of the first decade of the 21st century in Catalonia.

II. Independence movement in Catalonia

Catalonia has a rich tradition of marking its separateness from the rest of Spain. Catalan nationalists place the fight for the independence of the region in medieval times when the Spanish March in the era of Charlemagne's was created and struggled with the Arabs on the Iberian Peninsula, and then emphasize the importance of the union of the County of Catalonia with the Kingdom of Aragon in the 12th century. Despite the name of Aragon remained, the Catalan element quickly began to dominate, especially in the cultural and linguistic sphere, but also in economic matters, when Barcelona quickly became the main centre of the state, primarily in trade⁵. The Aragonese-Castilian Union created the Kingdom of Spain, where the Castilian part had an advantage (the king resided in Castile, most of the major officials came from there, and Castile also had a monopoly on the exploitation and trade of uncountable goods from Spanish overseas colonies, primarily American). For the first centuries of the unified Spanish state, Aragon, however, had very broad autonomy, maintaining traditional offices, the official language and a distinct culture.

⁴ For more on the rise of Basque nationalism: J. Orzechowska-Waślawska, *Baskowie. Powstanie współczesnego narodu*, Kraków 2014; M.Z. Dankowski, *Geneza i podstawy konstytucyjne autonomii Kraju Basków*, „Przegląd Prawa Konstytucyjnego”, 2015, No. 4.

⁵ D. Agustí, *Historia breve de Cataluña*, Madrid 2007, p. 36, n.

It was only as a result of the war of Spanish Succession between the Bourbons and the Habsburgs, and the support for the, as a result losers, House of Austria in Catalonia, that the Aragonian part of the kingdom was completely incorporated and all existing legal distinctions were abolished. In this way, the Catalan myth of Madrid's aggressive policy was born, and on September 11, 1714, the date of the capture of Barcelona by the Bourbons, it became a symbol of the fight against the Castilian invaders⁶.

The modern Catalan nationalism arose in the 19th century, part of a widespread movement in Europe that awakened national identity in many local societies, causing numerous uprisings and attempts at separatism across the continent. Unlike many other national liberation movements, *Renaixença* was quite pacifist from the beginning⁷. The political instability of the nineteenth century Spain intensified the desire of numerous local communities, including Catalans, to look for an alternative to living in a country that still lived in colonial splendor, of which only the legend was left, and which was struggling with constant economic and social problems.

After the overthrow of the Primo de Rivera dictatorship, the establishment of the Second Republic in 1931 fulfilled the dream of Catalan nationalists with a regional autonomy. Regional authorities were appointed (government named *Generalitat* and autonomous parliament), which were given extensive powers in the management of Catalonia, including the adoption of Catalan civil law, supervision of public works, administration and order that would not have a state significance, as well as supervision of primary and secondary education and the possibility of establishing schools (including one university) with Catalan language as in force as Castilian⁸. The autonomy obtained in the 1930s seemed to satisfy the Catalan elite, but it did not last long, because as a result of the victory of the troops led by General Francisco Franco in the Civil War (1936–1939), Spain returned to the centralized structure, abolishing republican achievements in field of autonomy. Again, Catalonia was the last bastion defending against the Falanga forces, identified with the enemy Castile.

⁶ A. Balcells, *Breve historia del nacionalismo catalán*, Madrid 2004, p. 28.

⁷ E.K. Kulak, *Kształtowanie się poczucia tożsamości Katalończyków na podstawie piśmiennictwa okresu odrodzenia kulturalnego i narodowego (XIX w. – początek XX w.)*, Kraków 2016.

⁸ A. Balcells, op.cit., pp. 141–146.

After democracy was restored, only Catalan parties exercised power in the Catalan autonomous community. The Autonomous Statute of 1978 was one of the first in Spain, and at the same time one of the widest in terms of competence and rights granted to Autonomous Communities. Until 2003, moderate nationalist electoral alliance Convergence and Union (*Covergència i Unió*, CiU) had a monopoly on governance, whose main goal was to maintain autonomy while cooperating with the central government. However, the beginning of the 21st century brought a radicalization of Catalan society, which resulted in the victory in the elections of parties confronted with Madrid. Their main goal was to extend the autonomous competences, which resulted in the implementation of the new Autonomous Statute, expanding the already extensive autonomy in relation to state power.

The 2008 economic crisis deepened the radical mood in Catalan society, skilfully won by local nationalists⁹. The rigid position of successive governments in Madrid not allowing the extension of autonomy to competences exclusively guaranteed in the Constitution for state authorities and recognition of unconstitutionality by the Constitutional Tribunal part of the regulations of the new Autonomous Statute increased the dissonance between Catalan society, fuelled by the increasingly aggressive policy of nationalist parties and the authorities in Madrid, as well as the rest of Spanish society.

In the second decade of the 21st century, the idea of self-determination and the organization of an independence referendum in Catalonia began to be bolder. The government in Madrid and the Constitutional Tribunal did not allow the implementation of the ideas of secession forced by Catalan politicians, finding the next two referendums from 2014 and 2017 unconstitutional¹⁰.

⁹ See more: M.Z. Dankowski, *Influence of the global financial crisis on the separatist aspirations of Catalonia from the perspective of the Spanish internal law*, „Polish Review of International and European Law” 2018, Vol. 7, No. 1.

¹⁰ About the Catalan referendums see: M.Z. Dankowski, *The legality of the Catalan independence referendums*, „Przegląd Prawa Konstytucyjnego” 2017, No. 6.

III. The procedure of state interference in the activities of the Autonomous Community authorities

As stated earlier, the 1978 Constitution pays much attention to matters of regional autonomy. It should be emphasized once again that it contains general statements, since its publication took place before the creation of any Autonomous Community. However, already at that time some future difficulties and problems were foreseen that the state could face in relation to each regions and its local authorities. Control, its scope and borders, which state authorities exercise over Autonomous Communities, remains one of the fundamental issues. In this way, the creators of the Constitution guaranteed the subjection of the Autonomous Communities to the existing normative order and the political interference¹¹. State control results indirectly from constitutional statements expressed in matters falling within the exclusive competence of state organs¹². The creators of the Constitution also directly referred to fields that are subject to state control, and which manifest themselves primarily in legal control of a jurisdictional nature¹³, which is fulfilled by the Constitutional Tribunal (in the case of disposition of autonomous authorities of the nature of a law) and other legal and administrative acts, in accordance with application of provisions relevant to other constitutional organs. In addition, the state, through the Court of Auditors (*Tribunal de Cuentas*), controls the finances and the budget of the Autonomous Communities¹⁴, as well as the exercise by the autonomous authorities of functions delegated by the state¹⁵.

However, in addition to the ordinary constitutional control exercised by the state over the authorities of the Autonomous Communities within the scope set out above, the Constitution also provides for an extraordinary control involving the compulsory fulfilment of obligations imposed on the authorities of the Autonomous Communities by law, restore the constitutional order or to avoid the occurrence of situations that may significantly affect the

¹¹ I. Molas, *Derecho constitucional*, Madrid 1998, p. 193.

¹² See more: M.A. Aparicio, *Introducción al sistema político y constitucional español*, Barcelona 1994, pp. 147–148.

¹³ Art. 153 a and c, *Constitución Española* (further: CE), “Boletín Oficial del Estado” 311, de 29.12.1978.

¹⁴ Art. 153 d, CE.

¹⁵ Art. 153 b in relations with art. 150.2, CE.

general interest of the state. To implement this procedure, the government is required to formulate an earlier request and must receive the consent of the Senate by an absolute majority¹⁶.

After receiving the consent of the Senate, the Government is entitled to take remedial action to restore the rights and activities of the autonomous community to the constitutional path. In such a situation, the Spanish Government will be able to issue instructions to the authorities of the Autonomous Community and even suspend their authorities, assuming direct authority over the activities of the Autonomous Community in order to restore the constitutional order¹⁷.

Until the attempt to secede of Catalonia, only in one case it was considered to apply the procedure provided in art. 155 of the Constitution. This took place in 1989 and concerned the Government of the Canary Islands Autonomous Community. The then Prime Minister of Spain Felipe González threatened to implement the extraordinary procedure of art. 155 due to non-compliance with tax customs tariffs for imported goods originating in the European Community. Ultimately, there was no government intervention at the time, as the local authorities finally complied with the European Community commitments previously adopted by the Spanish government¹⁸. Later on, there was a possibility of implementing art. 155 towards the autonomous authorities of the Basque Country in connection with the proposed plan to extend tax competences (the so-called Plan Ibarretxe), which goes beyond the constitutional competences of the autonomous community at the beginning of the 21st century¹⁹.

Similar normative solutions, allowing the state to intervene in internal matters of the autonomy in extraordinary cases, exist in other constitutional systems of federal states or those with autonomous territories. Examples are Germany (from which the creators of the Spanish Constitution took the most

¹⁶ Art. 155.1, CE.

¹⁷ Art. 155.2, CE.

¹⁸ For more on the implementation of European Community obligations by the authorities of the Autonomous Communities see: A. La Pérgola, *Autonomía regional y ejecución de las obligaciones comunitarias*, "Revista Española de Derecho Constitucional" 1985, No., pp. 9–40.

¹⁹ J. Ridao Martín, *La aplicación del artículo 155 de la Constitución a Cataluña*, "Revista Vasca de Administración Pública" 2018, No. 111, pp. 170–171.

systemic solutions)²⁰, Italy²¹, Portugal²², Switzerland²³, the United States²⁴ and Austria²⁵. For Spain, whose entire territory is covered by autonomous communities, such a solution in the Constitution has become necessary. However, there are some differences between the state of autonomy and federal states in the control of autonomous territories, and the most important of them is, unknown in the constitutions of federal states, the reference to the “general interest” of the state, as is the case in Spain²⁶.

IV. Application of art. 155 of the Constitution to the autonomous authorities in Catalonia in 2017.

The second of the independence referendums, which took place on October 1, 2017, ended with an armed intervention of the state police and street riots, and in view of the affirmative results for the idea of secession from Spain, led to a bizarre situation when the autonomous government declared independence, while immediately suspending it indefinitely. It was the only case in history of a “suspension” of independence and a precedent on a global scale.

Earlier, the Spanish Prime Minister Mariano Rajoy threatened that if the referendum of October 1, 2017 was convened and a unilateral independence declaration would be proclaimed, the government would be forced to implement the procedure provided for in art. 155 of the Constitution, due to repeated intentional violation of constitutional obligations by the Catalan authorities²⁷. The most important allegations against the Catalan authorities were: an attempt to implement the illegal process of secession, violating the constitu-

²⁰ Art. 37, *Grundgesetz für die Bundesrepublik Deutschland*, on 23.05.1949.

²¹ Art. 126, *Costituzione della Repubblica Italiana*, on 22.12.1947.

²² Art. 238, *Constituição da República Portuguesa*, on 25.04.1976.

²³ Art. 52, *Bundesverfassung der Schweizerischen Eidgenossenschaft*, on 18.04.1999.

²⁴ Art. 4.4, *Constitution of the United States of America*, on 17.09.1787.

²⁵ Art. 100, *Österreichische Bundesverfassung*, on 01.10.1920.

²⁶ L. Álvarez Álvarez, *La coerción estatal del art. 155 CE en la estructura del estado autonómico*, “Teoría y Realidad Constitucional” 2016, No. 38, pp. 278–279.

²⁷ J.J. Mateo, A. Díez, *Rajoy pide a Puigdemont que confirme la declaración de independencia para aplicar el artículo 155*, “El País”, 11.10.2017, https://elpais.com/politica/2017/10/11/actualidad/1507704870_996951.html (10.11.2019).

tional integrity of the state²⁸, permanent conscious ignoring of judgments and decisions of the Constitutional Tribunal, passing a law aimed at a convocation of an illegal referendum, in order to constitute the Republic of Catalonia.

The Catalan authorities' consistent pursuit of secession and rejection of the attempted dialogue put forward by the Spanish Government resulted in the implement of the procedure provided for in art. 155 of the Constitution and the suspension of the Generalitat, the arrest of some of its members (the rest, including the President of the autonomous Government, took refuge abroad) on charges of attempting secession and financial embezzlement, the introduction of a state government commissioner and the convocation of elections of a new autonomous Parliament. The activities of the Government were aimed at restoring constitutional order in the region, including primarily by restoring the rights and obligations of the citizens of Catalonia enshrined in the Constitution, as well as maintaining the proper functioning of public administration and economic development in the Autonomous Community²⁹.

After decisively pacifying the decision-makers of the Catalan unilateral independence, the Spanish Government began to manage the Catalan Autonomous Community. Local elections were called by the Spanish Prime Minister Mariano Rajoy for December 2017. The centre Ciudadanos party won the elections, but it remained in opposition to the government formed by three independence parties (Junts per Catalunya, Esquerra Republicana de Catalunya, Candidatura de Unidad Popular). The new Autonomous Parliament tried to designate for the position of President of the Autonomous Community once again Carles Puigdemont, President of the previous term, responsible for the unilateral declaration of independence and currently in exile. The Constitutional Tribunal blocked this candidacy, as did the next of Jordi Sánchez, who was in custody at that time, accused of rebellion and financial embezzlement. After several months of impasse, it was not until May 2018, that the President of the Autonomous Community in the person of Quim Torra was elected³⁰. After swearing in the new President of the Autonomous

²⁸ Art. 2, CE.

²⁹ *Las medidas de Rajoy para aplicar el artículo 155*, "El País", 21.10.2017. https://elpais.com/politica/2017/10/21/actualidad/1508583010_870430.html (10.11.2019).

³⁰ García L.B., Quim Torra, investido presidente de la Generalitat, primer paso para levantar el 155, "La Vanguardia", 14.05.2018, <https://www.lavanguardia.com/politi->

Community, the procedure of the Autonomous Community provided for in art. 155 of the Constitution has been completed.

In the meantime, the government in Madrid has changed. PP was replaced by PSOE, and Pedro Sánchez became the new Prime Minister of Spain. The new political order tried to break the impasse, but in the face of severe imprisonment sentences imposed on the detained Catalan politicians responsible for the secession (the court imposed defendants on absolute imprisonment for a period of 9 to 13 years, accused staying outside the country remain free), again public protests erupted in Barcelona against the Madrid government³¹.

V. A reform of the state system or only cosmetic changes for the Constitution?

Contrary to what was broadcast by the mainstream media, the Catalan autonomy was not suspended, moreover, its rights remained within their constitutional framework, and only the authorities of the Autonomous Community that acted contrary to the constitutional statements were removed by the Government in Madrid. The introduction of temporary authorities and the convocation of new elections has become a constitutional form of rescue for the existence of the Autonomous Community in the shape in which it operated so far.

However, the unprecedented events of 2017 raise new questions: is Spain in need of a thorough reform of the state system, or only remedial action against possible future crises, without a fundamental changing of the Constitution? The Spanish constitutionalists jointly and severally point to the need for change, but they do not agree on the scope of an eventually reform³². After more than four decades in force, the Constitution has lost some relevance

ca/20180514/443579266437/quim-torra-presidente-generalitat.html (10.11.2019).

³¹ R. Rincón, *Sentencia del 'procés': penas de 9 a 13 años para Junqueras y los otros líderes por sedición y malversación*, "El País", 15.10.2019, https://elpais.com/politica/2019/10/14/actualidad/1571033446_440448.html (10/11/2019).

³² G. Cámara Villar, *La organización territorial de España. Una reflexión sobre el estado de la cuestión y claves para la reforma constitucional*, "Revista de Derecho Político", 2018. No. 101, pp. 396–430; M. Aragón Reyes, *Reforma del Estado autonómico: mejor y no sustitución del modelo*, "Fundamentos: Cuadernos monográficos de teoría del estado, derecho público e

and requires reforms, that is an indisputable fact. Especially the territorial issue and the issue of Autonomous Communities require studies in the field of their improvement and adaptation to prevalent social and political standards. After all, when the Constitution in 1978 entered into force on the map of Spain, there was no autonomous communities yet and it was impossible to predict how their creation would affect the internal policy of the state, as well as the societies of particular regions of Spain.

Certainly, the most important task facing modern Spain is to preserve territorial integrity, but it also seems that the conduct of decentralization of the state is inevitable. Returning to a highly centralized Spain controlled from Madrid is not feasible today, and regional nationalist movements are increasingly influencing politics. However, is the road to federalism, as some liberal politicians say, supported by most peripheral nationalisms, the right way? However, Spain seems to be avoiding a federation along the lines of USA, Switzerland or Germany. Although regional nationalisms in Catalonia, the Basque Country, as well as Galicia and the Canary Islands are stronger today than ever, they are peripheral parts of the country. Regional politicians in Extremadura or Murcia certainly do not have aspirations to extend their autonomy, not to mention secession, as the societies of most autonomous communities feel strongly identified with Spain.

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