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An Outline History of the King's Veto in Spain

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Abstract

Although the current Constitution of 1978 does not include the right to a legislative veto among royal prerogatives, this institution has a rich tradition in Spanish constitutionalism. In the 19th century, despite the clash between conservative and liberal ideas, the King almost continuously had the right to refuse to sanction law projects. Only the political changes of the 20th century finally deprived the monarch of the right to intervene in the legislative process. However, under the current Constitution, all laws must be sanctioned by the King, which often causes political and legal controversy.

Streszczenie

Zarys historii królewskiego weta w Hiszpanii

Choć obecna Konstytucja z 1978 r. nie przewiduje wśród prerogatyw królewskich prawa do weta legislacyjnego, instytucja ta posiada bogatą tradycję w hiszpańskim konstytucjonalizmie. W XIX w. pomimo ścierania się ze sobą idei konserwatywnych i liberalnych, Król niemal nieprzerwanie posiadał prawo do odmowy sankcjonowania projektów ustaw. Dopiero zmiany ustrojowe XX w. pozbawiły ostatecznie monarchę prawa do ingerencji w proces legislacyjny. Jednakże pod rządami obecnej Konstytucji wszystkie usta-

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wy muszą być obligatoryjnie sankcjonowane przez Króla, co nierzadko wywołuje polityczne i prawne kontrowersje.

I.

Among the royal prerogatives, the Spanish Constitution of 1978 lists the sanction and promulgation of laws in the first place². Each law must be signed by the King, although he is not legally responsible for its content, unlike the President of the Government or the appropriate minister who shall countersign it. The constitution makes it clear that the King sanctions a law passed by the parliament within fifteen days and ordering it to be promulgated without any delay³. Thus, the Basic Law does not allow the exclusion of a royal sanction for a law previously passed by the legislature. It cannot be considered that the law is the result of a concurrence of powers between the parliament and the Crown. The concept of sanction used no doubt for the love of old formulas, is entirely connected with the promulgation, an obligatory and purely formal act of the King, who can neither prevent, nor delay the promulgation of the law, or alter its content⁴. Accordingly, it has been noted in the doctrine that a royal sanction is an absolute imperative, with no exceptions, but also necessary for the entry into force of the law⁵. The law cannot be published without the royal sanction. Hence its great importance in the legislative process.

The political role of the King in Spain is marginal under the present Constitution and is nowadays a relic of historical tradition rather than a point of reference for the political system. However, in the era of early Spanish constitutionalism, the Crown had a significant position in the state system, and its

² Art. 62, Constitución Española, Boletín Oficial del Estado, No. 311, 29.12.1978 (further: CE 1978).

³ Art. 91, CE 1978.

⁴ F. Rubio Llorente, *El procedimiento legislativo en España. El lugar de la ley entre las fuentes de derecho*, "Revista Española de Derecho Constitucional" 1986, No. 16, p. 96.

⁵ J.J. Solozábal Echeverría, *Sanción y promulgación de la ley en la monarquía parlamentaria*, "Revista de Estudios Políticos (Nueva Época)" 1987, No. 55, p. 373.

rights and possibilities went far beyond the current ones. It was no different with the institution of the royal veto, or rather the lack of sanctions for the law projects, which is not known in the current Constitution but has a rich tradition in Spanish constitutionalism.

II.

In the pre-constitutional period, the monarchs of particular kingdoms on the Iberian Peninsula (Castile and Aragon), which at the turn of the 15th and 16th centuries merged into the Kingdom of Spain, ruled in an indivisible and absolute manner, which did not deviate from the standards then in force in Western Europe. Admittedly, councils (*consejos*) were established, being the most important administrative organs, and also one of the few institutional binders of the state, apart from the monarch⁶. The councils did not have a decisive vote, but only supported the monarch in making a sovereign decision. Also, parliamentary conventions – *Cortes*, were convened by the King at his will, representing a limited number of cities that had the privilege of sending deputies⁷. They did not have greater legislative power, only the possibility of submitting a petition to the King, the occasional right to object to royal proposals, and decision-making in the imposition of extraordinary tributes. The king remained the most important and ultimate center of state power, which he shared modestly and reluctantly. Only the ideology of the Enlightenment on the one hand and the Napoleonic invasion on the other led, again in line with the world trends of the epoch, to the formation of other entities willing to take power in the state, including the legislative power.

An extremely significant moment in the history of Spanish constitutionalism is the deliberation of the Cortes in Cadiz in 1812, which ended with the adoption of the first sovereign Spanish Constitution⁸, very modern for

⁶ M. Tuñón de Lara, J. Valdeón Baroque, A. Domínguez Ortiz, *Historia Hiszpanii*, Kraków 2007, pp. 261–263.

⁷ For more on the history and prerogatives of the *Cortes* of the *Ancien Régime*, see: J.L. Bermejo Cabrero, *En torno a las Cortes del Antiguo Régimen*, "Anuario de Historia del Derecho Español" 1993–1994, No. 63–64, pp. 149–234.

⁸ Earlier, in 1808, Napoleon imposed a Constitution for Spain in Bayonne, called the Bayonne Statute, but for most of Spanish constitutional historiography it is not considered as

those times. Under this act, Spain remained a monarchy, but the rights and powers of the King were limited. In the legislative field, the power belonged to the parliament, while the monarch was entitled only to the legislative initiative, though no longer exclusive, and the right to a suspensive and devolution veto when the act was returned to the parliament in the absence of the royal signature⁹. It is believed that the politicians gathered in Cadiz considered the King an enemy of the parliament, and thus an enemy of the systemic reform of the state, but the monarchy was maintained in order not to provoke the opponents of the new order, so important for the society, and to be able to introduce changes, in particular, in the economic and social sphere, which were established by the Constitution¹⁰. The Act of Cadiz was in force for a very short time, because only until the restoration of King Ferdinand VII in 1814 and the so-called Liberal Triennium (*Trienio Liberal*) in 1820–23, when the liberals came to power temporarily. Indeed, Ferdinand VII was not a friend of constitutionalism at all and, until the end of his reign, he tried to rule in an absolute manner, like his predecessors before the French occupation. Only the enthronement of his daughter Isabella II brought about political liberalization in Spain. However, as a result of the constant competition between conservatives and liberals, the state system was constantly changing, which led to political destabilization.

As the political system changed, the royal prerogatives must also change. Regulations similar to those contained in the Constitution of Cadiz, granting the king the right to refuse to sanction a law, were found in almost all Spanish Basic Laws of the 19th century. An exception was the Royal Statute (*Estatuto Real*) of 1834, under which the monarch had a monopoly on the legislative

a Basic Law, because it was granted forcibly by the occupant and its provisions practically did not enter into force. See A. Torres del Moral, *El inicio del constitucionalismo español*, "Anuario de Derecho Parlamentario" 2012, No. 26, pp. 181–182. The Statute of Bayonne granted a very strong position of the monarch, also in the legislative field: he had a legislative initiative and was responsible for the promulgation of laws, with only the approval of the laws by the parliament. Art. 4–13, *Constitución de 6 de julio de 1808*. Bayona, "Gaceta de Madrid", No. 99–102, 27–30.07.1808.

⁹ Art. 144, *Constitución Política de la Monarquía Española*, promulgada en Cádiz el 19 de marzo de 1812.

¹⁰ J. Varela Suanzes-Carpegna, *La monarquía en la historia constitucional española*, "Revista de Derecho Político" 2018, No. 101, p. 22.

initiative, so naturally, the regulation of the right to veto was redundant in this case¹¹. As the Royal Statute of 1834 turned out not to be acceptable to most of the Spanish political scene at that time a liberal Constitution was quickly adopted in 1837. Unlike the Constitution of 1812, it loosened the somewhat restrictive separation of powers to unify the Spanish society, thus reconciling the traditional ideas of Ancien Régime (*Antiguo Régimen*) with the features of a modern constitutional monarchy¹². The King had the right to convene and dissolve the lower house of parliament and retained the right to absolute veto of law projects passed by the *Cortes*¹³. It was a step backward from the suspensive veto enacted in Cadiz and was contrary to European tendencies, while the British and French remained the model systems, in which the absolute veto for the monarch was abolished. Hence the numerous voices of liberals that the so-formulated norm placed the King above the will and sovereignty of the people¹⁴.

Another political turn, this time toward conservatism, took place in 1845. The new Constitution strengthened the political position of the Crown again. Of course, the King retained the option of absolute vetoing the law projects by refusing to sanction them¹⁵. In the years that followed, Spain's political instability caused the appearance of numerous new constitutional projects, both conservative and liberal, which eventually did not enter into force. The closest to the promulgation of a new liberal constitution was in 1856, but due to the military coup d'état the act was not finally implemented. The project was important because this time the people became the sovereign and all the laws and institutions of the state were subordinated to their will, including the King. Although the rule containing the possibility of not sanctioning the bill was left unchanged¹⁶, the precedent of subjecting the King to civic control

¹¹ Estatuto Real, promulgado en Aranjuez el 10 de abril de 1834, "Gaceta de Madrid", No. 55, 16.04.1834.

¹² Constitución de la Monarquía Española, promulgada en Madrid el 18 de junio de 1837, "Gaceta de Madrid", No. 935, 24.06.1837 (further: CE 1837).

¹³ Art. 47, CE 1837.

¹⁴ P. Díaz Fernández, *La Constitución de 1837: ¿Qué tipo de Monarquía queremos?*, "Espacio, Tiempo y Forma. Serie V, Historia Contemporánea" 2006, vol. 18, pp. 86–87.

¹⁵ Art. 38, Constitución de la Monarquía Española, promulgada en Madrid el 23 de mayo de 1845, "Gaceta de Madrid", No. 3904, 23.05.1845.

¹⁶ Art. 40, Constitución de la Monarquía Española, no promulgada de 1856, <http://www.cepc.gob.es/docs/constituciones-espa/1856.pdf?sfvrsn=2> (9.10.2020).

was the beginning of the systematic degradation of the Crown in the Spanish political system.

Despite the unsuccessful attempt at liberalizing the political system, the liberal party did not abandon its intentions and a decade later as a result of an economic crisis that led to the outbreak of the so-called Glorious Revolution (*Gloriosa Revolución*) in 1868, and as a consequence of the abdication and forced emigration of Isabella II, promulgated the new Constitution in 1869. The clear division of powers assigned the King only to the executive power. The Crown still had a fairly wide range of prerogatives, including legislative initiative, but the veto power was lost for the first time in history. The King was obligated to sanction laws passed by parliament still on his behalf. However, the Constitution did not provide for the possibility that he could not in any way fulfill the obligation to sign the law¹⁷.

One of the most modern Constitutions in Europe at that time¹⁸, instead of pacifying the society's mood, made people even more irritated. The constitutional monarchy quickly collapsed, and the *Cortes* made the precedent decision to implement a republican system in Spain, thereby removing the institution of the Crown for the first time in the history of an Iberian state. The draft Federal Constitution failed to enter into force as another coup d'état was made. The constitutional project assumed the President was to be the head of state in the First Republic, but he was not to have the right to a legislative veto¹⁹.

The omnipresent political chaos in the country, intensified by the civil war, caused the monarchy to be quickly restored and in 1876 another, this time relatively conservative, Constitution was adopted. The executive power returned to the Crown, but it was not exercised directly by the King, but by the Government (*Gobierno*) appointed by the monarch. Also, the right of absolute veto, in the form of the King's refraining from sanc-

¹⁷ J.I. Marcuello, M. Pérez Ledesma, *Parlamento i poder ejecutivo de la España contemporánea (1810–1936)*, "Revista de Estudios Políticos (Nueva Época)" 1996, No. 93, p. 28.

¹⁸ M.V. López-Cordón Cortezo, *La revolución de 1868 y la I República*, Madrid 1976, pp. 34–35.

¹⁹ About the project of the federal Constitution see more: A. Pérez Ayala, *La I República. Marco político y proyecto constitucional*, "Revista de Estudios Políticos (Nueva Época)" 1999, No. 105.

tioning the bill, returned to the Spanish political system with the Constitution of 1876²⁰.

It is clear from the presented list that the 19th-century Constitutions, in a conservative spirit, granted the King an absolute veto, while the progressive and democratic ones (except for the text from 1837) limited the right of the royal veto only to suspensive²¹. The compromised nature of the Constitution of 1876 resulted in a relative political peace regarding the systemic principles of the state. Although the Basic Law did not fully satisfy the political parties, neither conservatives nor liberals, it was accepted by all political parties for a long time. Despite that the Constitution remained conservative in spirit, it contained many modern solutions for its time. The disputed issues have been regulated by general clauses and vague expressions, as well as norms referring to lower rank acts. Already in the 20th-century reform proposals appeared, including the royal right of veto. In 1917, it was proposed to change the absolute veto for a suspensive one, but the project was never implemented²². Even during the 7 years of Miguel Primo de Rivera's dictatorship, when the existing Constitution was suspended, it was not possible to adopt a new one.

In 1931 the Second Republic was proclaimed. There was, of course, no place for a King in the Republican Constitution. The President became the head of the state. Seeking inspiration in the system of the French Third Republic, the authors of the Spanish Basic Law avoided the direct election of the head of state by citizens but granted him broad powers, more extensive than in other Western European republics of the interwar period²³. One of the significant prerogatives of the President was a suspensive veto over bills, except for bills deemed urgent (*urgente*)²⁴. A qualified majority was required to overrule the presidential veto and finally have the law promulgated by the parliament. After the Civil War (1936–1939), during the dictatorship of Francisco Franco, the veto of the head of state became unnecessary in the face of sys-

²⁰ Art. 44, Constitución de la Monarquía Española, de 30 de junio de 1876, "Gaceta de Madrid", No. 184, 2.07.1876.

²¹ J. Varela Suanez-Carpenga, op.cit., p. 23.

²² J.I. Marcuello, M. Pérez Ledesma, op.cit., p. 33.

²³ Ibidem, p. 35.

²⁴ Art. 83, Constitución de la República Española, de 09 de diciembre de 1931, "Gaceta de Madrid", No. 343, 9.12.1931.

temic reorganization. The 1978 Constitution no longer restored the royal right to interfere in the legislative process.

III.

In the light of the Constitution currently in force, the head of state (*Jefe del Estado*) in Spain is the King (*Rey*), who comes from the French dynasty of Bourbons (*Borbón*). It has ruled in Spain intermittently since the beginning of the 18th century²⁵. After the restoration of the monarchy, Juan Carlos became King in 1975, who reigned until 2014, when he abdicated in favor of his son Felipe VI. According to the Constitution of 1978, the monarch does not have real power and performs mainly representative functions as a “symbol of the unity and permanence of the state” (“*símbolo de la unidad y permanencia del Estado*”)²⁶. Despite the designation of a catalog of constitutional functions belonging to the Crown²⁷, the role of the King is only symbolic, as almost all his actions require the countersignature (*refrendo*) of the President of the Government or the competent minister, although the persons who countersign the acts are responsible for them²⁸. Only in two cases is the King not limited in any way: appointing a guardian in his will for a minor heir²⁹ and managing his Household³⁰.

The royal prerogatives include the right to sanction and promulgate laws previously passed by Parliament, without the right to refuse to sign such a normative act; summoning and dissolving the Parliament at the request of the Prime Minister and the right to call elections according to the terms provided in the Constitution. The King also proposes a candidate for President of the Government, i.e. the Prime Minister, who comes from the party that won the general election, and as the case may be appoint him or remove him from the office, in terms pro-

²⁵ The continuity of the dynasty was broken first during the French occupation (1808–1814), then after the abdication of Isabella II, the enthronement of the Savoy dynasty and the proclamation of the First Republic (1868–1874), also during the Second Republic (1931–1939), and finally during the Franco dictatorship (1939–1975).

²⁶ Art. 56.1, CE 1978.

²⁷ Art. 62, CE 1978.

²⁸ Art. 64, CE 1978.

²⁹ Art. 60.1, CE 1978.

³⁰ Art. 65.2, CE 1978.

vided in the Constitution. As well the monarch appoints and dismisses ministers at the proposal of the Prime Minister. The King's duties also include issuing decrees agreed upon by the Council of Ministers to confer public civil and military positions. The monarch may award honorary titles and distinctions according to applicable laws. At the request of the President of the Government, the King may preside meetings of the Council of Ministers whenever he deems opportune and has the right to be informed about affairs of the state. Moreover, in exceptional cases, the monarch calls a referendum in the circumstances provided in the Constitution, and also have the right to grant pardons (*derecho de gracia*), within the limits set by the law (the act may not authorize the King to apply general pardons). He is also the supreme commander of the Armed Forces and exercises the High Patronage of the Royal Academies³¹. The King has the right to accredit ambassadors and other diplomatic representatives. Foreign representatives in Spain are accredited to the monarch. The King is responsible for expressing the consent of the State to enter into international commitments by treaties, according to the Constitution and the laws, as well as declaring war and make peace, following authorization by the General Courts³². The King may also deliver messages to the society, although it is not a legal duty but a long-standing, well-established tradition³³. The person of the King is inviolable and excluded from political or legal responsibility³⁴. Given the strongly limited, and even, as emphasized by the Spanish doctrine, the symbolic role of the monarch, it is customary to say that the King does not have *potestas*, although have *auctoritas*³⁵.

IV.

During the reign of Juan Carlos I, a situation occurred twice when the King tried to refuse to sanction a law project, explaining that its content was incon-

³¹ Art. 62, CE 1978.

³² Art. 63, CE 1978.

³³ See more about the custom of royal public speeches: A. García-Ramos, *Los mensajes navideños de la monarquía española en el siglo XXI: ¿Un reflejo de los principales problemas del país?*, "Sociologados. Revista de Investigación Social" 2016, vol. 1, No. 2, pp. 15–50.

³⁴ Art. 56.3, CE 1978.

³⁵ F.J. Díaz Revorio, *La Corona desde la perspectiva jurídico-constitucional*, "Revista Española de Derecho Constitucional" 2004, No. 71, pp. 400–401.

sistent with his conscience. First, it was about the law allowing same-sex marriages in 2005³⁶. Five years later, the case was about the bill liberalizing the abortion law³⁷. Spain does not have a similar solution in its Constitution like was used in Belgium, where for the same reason – moral resistance to signing the law liberalizing abortion – King Baldwin resigned from the throne in 1990, for 36 hours. The temporary abandonment of the King was carried out under a norm which states that: “If the King finds himself unable to reign, the ministers, having had this in-ability stated, immediately convene the Houses. The Regent and Guardian are appointed by the joint Houses”³⁸. After the abortion law was passed, the Belgian Parliament restored Baldwin to the throne, although it did not have to do so and could use the situation to appoint a Regent. This interesting solution allowed in the Belgian case not to sign the bill by the objectionable monarch, but at the same time not to go beyond the limits of the Constitution and respect the will of the parliamentary majority. In Spain, such a situation was not possible, as the Basic Law does not provide for a temporary withdrawal by the monarch. Abdication requires a special Organic Law (*Ley Orgánica*) passed by the Parliament³⁹. The return of the abdicating King to the throne would not be possible, because the Constitution, with the accession of the heir to the throne, automatically designates his successor, who takes the title of Prince or Princess of Asturias⁴⁰. In the first case from 2005, it would be Philip’s sister – Elena de Borbón y Grecia, and in 2010, when Philip already had offspring – his daughter Leonor de Borbón y Ortiz, who eventually became the heir to the throne after the abdication of Juan Carlos I in 2014. If not rejected, the title of heir to the throne is intransitive. According to John Charles I, having numerous descendants, in several lines, they would all be closer to the right to the throne than the abdicating King.

³⁶ The act amending the Spanish Civil Code in this matter finally entered into force. Ley No. 13, 2005, de 1 de Julio, por la que se modifica el Código Civil en materia de derecho a contraer matrimonio (BOE 157, 2.07.2005).

³⁷ Ultimately, the act was promulgated in early 2010. Ley Orgánica No. 2, 2010, de 3 de marzo, de salud sexual y reproductiva y de la interrupción voluntaria del embarazo (BOE 55, 4.03.2010).

³⁸ Art. 93, The Belgian Constitution, https://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/GrondwetUK.pdf (9.10.2020).

³⁹ Art. 57.5, CE 1978.

⁴⁰ Art. 57.2, CE 1978.

If, however, the King ultimately refused to sanction the bill, the Parliament could find that he was incapable of performing his functions and appointed a Regent. The first to exercise the Regency would be the possible heir to the throne – the Prince or Princess of Asturias provided he or she has reached the age of majority. In the case of the heir to the throne's minor age, the Regency is exercised by the oldest relative closest to the Crown succession, according to the constitutional order⁴¹. It can therefore be concluded that the King, by refraining from signing a law, puts the throne at stake. Hence it is clear that the King's signature, although constitutionally required, is merely a technical act. The royal will is irrelevant in this case, as the monarch becomes an indispensable tool for promulgating an act, but passive about the norms of the Constitution. This case is not limited by the constitutional norm which provides for freedom in the, inter alia, ideological sphere because it is subject to limitations necessary to maintain the public order protected by law⁴². Certainly, the sanctioning of acts is one of the most important acts allowing to maintain public order.

Because of the coronavirus (COVID-19) pandemic, which particularly affected Spain at the beginning of 2020, another constitutional problem arose related to the King's sanction of legislative acts. In case of the King's illness, which would prevent him from fulfilling his constitutional duties, the Spanish legislative system will be paralyzed, as it will not be possible to pass legislation without the monarch's sanction. At a time when the speed of issuing decrees by the Government can have a fundamental impact on settling the pressing matters related to the fight with the consequences of a pandemic, the health of the King has become a matter of national importance for all Spanish society more than ever.

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