

**A SUMMARY OF THE SPANISH
STATE'S DEMOCRATIC
REGRESSION AND
GRIEVANCES
AGAINST
CATALONIA**

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HISTORICAL ANTECEDENTS

Catalonia has long had a self-governing spirit, manifested for the most part through the governing body called the Generalitat, created in 1359. It is safe to say that Catalonia's will to exist has persevered over centuries, despite the lack of understanding and contempt received in the form of attempts to hinder its recognition as a nation. In this regard, the heroic efforts of municipalism in the defense of Catalans' rights and interests are worth highlighting. It is impossible to understand the social and political reality of today's Catalonia without considering the work done and still ongoing by local councils around the country.

Throughout recent history, since the end of Franco's dictatorship, Catalonia has sought its place within the Spanish state by means of loyal cooperation. At that time, Catalan representatives worked strategically to develop the possibilities offered by the new constitutional framework to implement the self-government and national recognition of Catalonia, without ever renouncing the right to self-determination. From the end of the 1970's. political Catalanism offered stability to Spanish governments in exchange for a progressive consolidation of its self-government. This was formalized with the approval of the 1979 Statute of Autonomy. Nonetheless, the Catalan charter was born with significant shortcomings, which soon came to light. It is only necessary to remember the attempted coup d'état of February 23, 1981 and the consequent Organic Law on the Harmonization of Autonomy Process (LOAPA), that same year, as examples of Spanish institutions' clearly restrictive intent toward Catalonia.

Later, after the claims of political Catalanism had been ignored for some time, without any advancement toward a greater degree of self-

government. the Parliament of Catalonia began the process to create a new Statute of Autonomy, that of 2004.

It was approved in 2006, later ratified by the Spanish parliament, and was at last validated in a referendum by 73.4% of Catalans. This notwithstanding, a few weeks later, the Spanish Partido Popular (PP) and Spanish Ombudsman (Defensor del Pueblo) filed an appeal in the Spanish Constitutional Tribunal (TC) against the preamble, 124 articles and 13 provisions. Four years later, on June 28, 2010, the TC handed down its judgment that effectively pared the Statute to down to minimal levels, canceling several of its elements, and eliminating the concept of “nation” that was stated in the preamble. The ruling was received unfavorably in Catalan society, and marked a turning point for Catalanism. Catalonia’s fit within the Spanish state became more difficult.

This mental rupture of a broad segment of Catalans with the State was manifested in the popular symbolic “consultation” ballots on self-determination in over half of the country’s 947 municipalities. They began on September 13, 2009 in Arenys de Mar (Maresme) and concluded on April 10, 2011 in Barcelona (Barcelonès).

This change of paradigm began gradually and pragmatically, with the desire to implement an independent financing model, similar to the Basque and Navarrese “Economic Agreement” (concert econòmic). This was the claim that generated the broadest consensus at that time, and that would have put an end to the historic fiscal deficit. The proposal was validated by vote in the 2010 Parliamentary elections, and in July, 2012 the Catalan parliament backed the initiation of bilateral negotiations between the Catalan and Spanish governments.

Two months later, the President of the Autonomous Government of Catalonia, Artur Mas, met with the President of the Spanish

executive, Mariano Rajoy, who rejected any type of dialog to discuss a Catalan “economic agreement”. This categorical refusal by the Spanish Government frustrated Catalan society. In consequence, President Mas called early elections to gauge citizen support for the right to decide and hold a ballot on the political future of Catalonia.

The elections were held on November 25, 2012 and the parties in favor of the right to decide won nearly two thirds of the seats in parliament. For that reason, on January 23, 2013, the Parliament of Catalonia approved the Declaration of Sovereignty, which stated the “beginnings of a process to make effective the right to decide so that the citizens of Catalonia may determine their collective political future”. The same year, the Catalan executive again began talks with the Spanish executive to facilitate a consultation on the future of Catalonia. Despite the attempts by the Catalans to engage in a dialog, Rajoy’s response was always negative, and no alternative proposal was offered.

This reaction led to agreement, by 64% of the Catalan Parliament, to hold a consultation ballot of Catalan society on November 9, 2014. In July of that same year, the President of the Generalitat once again met with President Mariano Rajoy, to express his intention to call a consultation, and the will to hold it in a manner agreed with the Spanish government. Nevertheless, the Spanish State remained unwilling. Further, President Mas delivered to President Rajoy a document with 23 items concerning Catalonia’s grievances inflicted by the State. They had to do with the economy, financing and essential public services (health care, education or social services). Response to this document was also non-existent.

On September 19, 2014, the Parliament of Catalonia passed the Non-referendary Popular Consultations Act, which allows the public authorities of Catalonia to consult citizens on matters of general interest. With this law in hand, the President of the Generalitat signed a decree calling a consultation on the political future of Catalonia, scheduled for November 9, 2014. But two days later, the Constitutional Tribunal allowed an appeal by the Spanish Government, which suspended the decree on precautionary grounds. The Catalan government decided to press on with the initiative as a participative process, by those parts of the Consultation Act that had not been suspended. The Spanish government challenged the new call, and the Constitutional Tribunal suspended it, just five days prior to the vote.

Nevertheless, the preparations, 40,000 volunteers, 1,250 polling stations in municipal premises and the 6,400 electoral committees were already in place for the vote. The consultation was held as planned, with a successful turnout of over 2.3 million persons. Two months later, Catalonia's two main parties, together with pro-sovereignty associations, agreed to hold plebiscitary elections, as the only and ultimate mechanism available to know the opinion of the citizens with regard to whether Catalonia should become a State. The president of Catalonia called new elections, to be held on September 27. 47.74% of the Catalans voted for independence, while 39.17% voted against, and 11.45 were in favor of the right to decide.

The absolute majority of parliament proceeded with the road map, with the intention of revalidating the conclusion of this process with a referendum. In January, 2016, Carles Puigdemont took office as President of the Autonomous Catalan Government and soon met with President Rajoy to deliver the 46 requests and

proposals—an update of his predecessor’s document—to which no answer was given, either. In January of this year, the Catalan president once again met with his Spanish peer to reiterate his will to carry out the democratic mandate of the citizens from the September 27 elections, and insisted on the need to negotiate the terms of the referendum. But this too was unsuccessful.

Furthermore, the Constitutional Tribunal overruled a Parliamentary resolution that regulated the plans to hold a self-determination referendum, and suspended the items devoted to the plebiscite in the Generalitat’s current budget. In these months leading up to the referendum, the Spanish judiciary has begun a judicial persecution, issuing citations and filing charges against the President of the Autonomous Catalan Government, all other members of the Catalan Government and the Presiding Board of Parliament for the preparation of the plebiscite.

In the same vein, in March, former President Mas and three former ministers, Francesc Homs, Joana Ortega and Irene Rigau were convicted of organizing the November 9 consultation ballot (9N), barred from holding public office, and ordered to pay a fine. Likewise, the Court of Auditors has ordered the five to pay the 12 million euros it cost to carry out the consultation.

Still and all, despite the judiciary pressure of the Spanish institutions, on September 6, the Catalan Parliament approved by absolute majority the Referendum Act, and the Catalan Government approved the decrees necessary to call and hold the self-determination referendum scheduled for next October 1. Soon afterward, a majority of Catalonia’s mayors signed a decree of support for holding the referendum, though without any judicial effects. In keeping with this statement, they responded to the

Catalan president's request for information on the availability of premises usually used as voting stations, and they also opened the web platform for volunteer referendum collaborators to sign up. Over 45,000 volunteers sent in their details in one week's time.

In less than 24 hours, the Constitutional Tribunal allowed the complaint of unconstitutionality against the Referendum Act and the challenges against the election call decrees. As a consequence, these regulations were automatically suspended. Furthermore, the Constitutional Court ordered the notification of the mayors—and other authorities around the county—for them to block or halt any initiative related with holding the referendum. By doing so, the High Court exercised exceptional powers that are not suited to a constitutional oversight body. These competencies had been attributed to it by a legal reform imposed by the Spanish government in 2015, once the Catalan Parliament had a majority in favor of exercising the right to self-determination¹.

Moreover, it must not be overlooked that holding a referendum is not a crime, according to Spanish criminal law; it was decriminalized in 2005. Consequently, and based on a given interpretation of the Constitutional Tribunal's ruling, the Spanish Public Prosecutor's Office is summoning to testify as defendants mayors from all over Catalonia who signed the decree in support of the October 1 referendum.

Furthermore, the Senior Prosecutor of Catalonia has filed criminal charges against the president of the Catalan Association of Municipalities (ACM), which groups over 1,000 local councils, and the president

¹ On 11 March, 2017, the Venice Commission of the Council of Europe urged the Spanish State to reconsider the exceptional measures granted by this reform to the Constitutional Tribunal. The modifications gave the Constitutional Tribunal rights unsuited to it, that are normally assumed by other state authorities.

of Municipalities for Independence (AMI) which has over 500 associated local councils, for possible offenses of disobedience, malfeasance, or embezzlement for having informed municipal governments on the Referendum Act, and having promoted those governments' support for it.

A few weeks prior to the referendum, the Spanish Government, through the General State Prosecutor initiated a judicial offensive. The Civil Guard registered printing houses and companies, confiscated 45,000 letters intended to set up polling stations, intercepted eleven million and a half ballots and more than one million posters and diptychs of the Catalan Government and parties on 1-O. In tune, Spanish Government banned the institutional campaign of the referendum and the Spanish police appeared in media venues to notify the prohibition to broadcast it. Also, closed news websites on the referendum, the Internet page of the Catalan National Assembly and blocked 29 software programs for the management of the census, counting and telematic voting. Likewise, the local police seized material, identified participants in party conferences and prevented some political acts.

On the other hand, on September 20, the Civil Guard entered the offices of the Generalitat and held 14 officials to try to dismantle the logistics of the referendum. 60,000 people demonstrated in front of the Department of Economy against this action, in addition to rallies throughout the country and other parts of the State. Moreover, Spain's Constitutional Court imposed fines between 6,000 and 12,000 euros per day to members of the Catalan electoral board, which forced it to dissolve it.

However, the Spanish Government took control of the finances of the Generalitat, effective control of the Mossos d'Esquadra and placed a Civil Guard to coordinate the police operation against the 1-O, rein-

forced with the arrival of 10,000 Spanish policemen, hosted in three cruises, two in Barcelona and one in Tarragona, as well as hotels. They are still in Catalonia.

Spanish Government also sent a letter to the school and institute directors that threatened them of the risk of committing criminal offences if they ceded, by active or passive, the keys to the centers, and the Spanish Data Protection Agency also warned of fines up to 300,000 € to the members of the polling stations.

Accordingly, the Prosecutor's office ordered to Mossos d'Esquadra to seal off the polling stations from Friday afternoon before the referendum, despite the fact that thousands of citizens occupied them with the organization of various activities during the weekend, and then the Catalan police warned of the need for the centers to be free the day of the vote at 6 o'clock in the morning.

But this conjuncture of repression had its maximum exponent in the referendum on October 1 and went around the world: brutal and disproportionate police charges in polling stations across the country, with more than a thousand of injured and 319 sealed off schools. The stupefaction of international observers was maximum. Despite this, 2,286,217 citizens voted, maintaining a peaceful attitude. 90'18% voted in favor of 'yes', 7'83% in favor of 'no' and 1.98% voted blank. Certainly, the Catalan Government announced, before opening the polling stations, that the census would be universal and that, therefore, citizens could exercise their right from any point of voting.

The citizen response to condemn the violent repression of the State took place two days later, on October 3, in the form of a multitudinous arrest of an unprecedented country, with demonstrations throughout Catalo-

nia. Only in Barcelona, the police counted 700,000 participants in the various demonstration during the afternoon.

During the same night of the referendum, President Puigdemont promised to apply the result, he continued to show willingness to negotiate with the Spanish State and called for mediation to help solve the situation. In this sense, the Bar Association of Barcelona created the Independent Commission for Dialogue, Mediation and Conciliation, with universities, employers' associations, unions and other professional colleges. However, the initiative did not succeed, as did not succeed the talks of political leaders, such as Lehendakari, Iñigo Urkullu, or representatives of the ecclesiastical field.

In any case, on October 10, in plenary session of the Catalan Parliament which should serve to apply the result of the referendum, President Puigdemont suspended the proclamation of the declaration of independence and gave a new opportunity to negotiate, after receiving a direct appeal from the President of the European Council, Donald Tusk, to promote dialogue.

Despite of the Spanish Government initiated the procedures to apply article 155 of the Constitution - the absolute intervention of the autonomy - and required Puigdemont to clarify if he had proclaimed the independence. The president of the Generalitat offered two months of "dialogue, negotiation and pact", with two conditions: to reverse the repression against Catalonia and to specify as soon as possible an encounter with President Rajoy to

advance agreements. But the state executive demanded a second request, in which President Puigdemont made it clear that he had not

proclaimed independence. However, the Spanish Government decided to move forward the application of 155.

In the midst of these requirements on the declaration of independence, the Spanish National Court ruled unconditionally for the president of the Catalan National Assembly, Jordi Sànchez, and Òmnium Cultural, Jordi Cuixart, accused of sedition - imprisoned by force or outside the legal channels, the application of the laws or any authority, official corporation or public official, the legitimate exercise of their functions - by the concentrations of September 20 in front of Department of Economy, even though the leaders of the two sovereign entities have always been examples of pacifism and, on that occasion, they convinced the protesters to dissolve the protest so that the Civil Guard could leave the offices of the Catalan administration. Again, the independence movement returned to the masses to denounce these arrests. It must be remembered that the two entities, ANC and Òmnium, have been the main callers and organizers of the mass demonstrations of recent years, which have always been celebrated under exemplary civility.

Although the procedure of article 155 was already under way, the President of the Generalitat, through various mediators, tried to call elections to avoid the intervention of self-government and the release of political prisoners, but did not receive sufficient guarantees from the Spanish Government. For this reason, he decided to submit the decision on the proclamation of independence in the hands of the Parliament.

In this way, on October 27, the Catalan Chamber urged the Catalan Government to initiate the constituent process of the Catalan Republic, as an independent and sovereign State, of law, democratic and social. The vote received 70 votes in favor, 10 against and 2 abstentions. The

52 deputies of Citizens, PSC and PP chose to leave the chamber and not participate.

Virtually at the same time, the Spanish Senate gave the definitive green light to the application of article 155, which was validated with 214 seven, 47 and one abstention. Immediately afterwards, the Spanish Government made use of this article with the cessation of the president of the Generalitat and the directors of the Catalan Executive, dissolved the Parliament and convened in Catalonia on December 21. Thus, the intervention of the State in the Catalan institutions was severe and fulminant, and the Spanish Government assumed the effective control of the Catalan administration.

For this reason, on Monday President Puigdemont decided to exile in Brussels, along with other advisers from his Government. On the following day, at a press conference, he argued for his displacement to call on the involvement of the international community, demanded from Europe guarantees and security of a fair trial and urged Rajoy to accept the result of the elections of December 21, if independence gains.

However, on that same Tuesday, the National Court and the Supreme Court quoted the members of the Government and the Bureau of the Parliament, investigated by rebellion, on Thursday, to go violently and publicly to repeal, suspend or modify totally or partially the Constitution -, sedition and embezzlement of public funds. Defender advocates were less than twenty-four hours

The judge of the Spanish National Court, Carmen Lamela, declared unconditional jail for Vice President, Oriol Junqueras, and for Raül Romeva, Jordi Turull, Josep Rull, Meritxell Borràs, Joaquim Forn, Carles Mundó and Dolors Bassa. The only one who entered prison on

bail was the counselor Santi Vila, since the judge took into account his resignation before the declaration of independence. He left the next day after paying 50,000 euros.

The president and the rest of the exiled councilors in Brussels - Toni Comín, Clara Ponsatí, Lluís Puig and Meritxell Serret - asked to declare from Brussels, but the National Hearing issued a European arrest warrant and search and capture international. In this way, Puigdemont and the other members of the Government immediately showed their readiness to "collaborate fully with Belgian justice".

For this reason, they voluntarily presented themselves to a police station of the federal police. Then they were transferred to the Belgian Federal Prosecutor's Office and when they were attested, the court of instruction resolved to leave them free, provided they did not leave the country without the judge's permission, to reside in a permanent address and stay available to the judge until further notice.

INSTITUTIONAL GRIEVANCES

Parallel to this political process, there have also been institutional grievances originating in the Spanish state's systematic failure to comply. They have caused serious difficulties in the Treasury of the Generalitat and local councils, making necessary cutbacks in basic health care, education and social services.

To cite just one example, the Law on Local Administration Rationalization and Sustainability (LRSAL) is an affront to local autonomy and invasion of the Generalitat's competencies in the realm of territorial organization and local government. The ACM, along with local councils

from all over Spain, submitted a dispute with the Constitutional Tribunal in the defense of local autonomy which has not yet been ruled on.

Furthermore, the Spanish government has not completed the investments defined by the Statute, nor has it carried out works of high priority for the economic development of Catalonia. These include such projects as the Mediterranean rail corridor. It has cut back the commuter and regional train service devolution to the management of personnel and trains, but not the tracks, stations and platforms. On another note, Catalan airports are subject to centralized, Madrid-based management, by a state entity that has always prioritized the airport in the country's capital. Additionally, the percentage of investment diminishes year after year, and matches neither the economic nor the demographic weight of the nation that, despite being the second-highest in tax capacity (18.4% of all of Spain's tax revenue) is next-to-last in resources received (13.6%) with a fiscal deficit that is equivalent to 10% of the Catalan GDP.

POLITICAL GRIEVANCES

There have also been political grievances, due to insufficient separation of powers, lack of transparency and corruption.

On October 16, 2015, the Spanish Parliament, with the absolute majority of the Partido Popular, approved the reform of the Law on the Constitutional Tribunal. The modification of the Organic Law granted the TC competencies to enforce its judgments, supervise them, and punish and suspend from their duties those public officials who do not comply with them. It was a modification especially conceived for pro-sovereignty politicians. The Venice Commission stated that the modification of the TC law undermined the independence of the high court as

an arbiter. According to the Council of Europe, that the TC can oblige compliance with its own judgments puts its neutrality in jeopardy.

From the beginning of the pro-sovereignty process, the Spanish government's delegation in Catalonia, the Public Prosecutor and the ruling Partido Popular have brought over 400 legal actions against local councils. The grounds for the legal complaints are wide-ranging: motions of support for fiscal sovereignty (106); not flying the Spanish flag from the local council building (105); paying the annual dues for the Municipalities for Independence Association (91); hiring special trains to go to Barcelona for Catalonia's national day (September 11) in 2012, or for opening local council buildings on Columbus Day (58).

Furthermore, the Prosecutor's Office of the Spanish High Court filed suit against eight different local councils for supporting the Catalan Parliament's resolution on beginning the constituent process. They are accused of rebellion or sedition, in addition to

malfeasance, disobedience, illegal use of public funding and misappropriation of duties.

Additionally, Spain launched the so-called "Operation Catalonia", with the aim of digging up or fabricating scandals on Catalan politicians who defended the right to decide. This operation was uncovered by the "Público" newspaper, with the release of recordings of the director of Catalonia's Anti-fraud Office and the former Minister of the Interior of the Spanish Government, Jorge Fernández Díaz, that prove the existence of the operation.

SOCIAL GRIEVANCES

There have also been social grievances that are generating inequality and shortcomings of resources for basic services. In recent years, the State has reduced financing devoted to social policies to a tenth of what it was in 2010. From 76.6 million euros in 2010 to 6.3 million in 2015.

Between 2010 and 2014, Catalonia has been forced to cut back its health care spending by around 14% to meet the deficit goals. Furthermore, the Autonomous Catalan Government has had to cover social service programs that the Spanish state has ceased to finance, or has financed in a much lower percentage than it is supposed to. This is the case of the program for dependency services (18% financed by the Spanish state and 82% for Catalonia, when it should be half and half), or the Action Plan for the Elderly, the Volunteering Plan, support for families in special situations, specific programs for women, youth and child abuse prevention, among others.

CULTURAL GRIEVANCES

Last, cultural grievances have also been generated: against Catalan language and culture, with the flagrant rupture of a linguistic model based on integration and cohesion in Catalan schools, or the Ministry of Culture's non-fulfillment of funding commitments to cultural infrastructure.

The grievances and discriminatory treatment by the Spanish government are becoming constant, and reiterated. That is why Catalan society is approaching a historic crossroads and is asking to decide, freely and pacifically, its future as a country.