"Secessionist challenge and the execution of constitutional resolutions"

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The Constitutional Court's authority was seriously harmed after the Statute of Catalonia's process turned into an exaggerated episode that should have been solved by the Spanish Parliament, las Cortes Generales. It ended with postponed magistrates, abusive recusals and a divided Court who took a stance on something to which the Catalan citizens had voted through referendum. This isn't logic at all. Neither is to justify the secession of Catalonia because of the rejection of a sentence. Surprisingly, recovering the prestige and impartiality of magistrates by going through an objective recruitment- and a necessary reform of the Constitution- is still out of the agenda. Two legal reforms have just been approved that deserve different judgements. A prior appeal for the Statutes before going through referendum will solve one issue. However, the introduction of executive tools is problematic.

It seemed to be a good idea, but the type of initiative wasn't correct: at the request of a unique parliamentary Group and without consulting the Constitutional Court. Neither was how it was processed: hurrying for a single reading and through the procedure of urgency in parallel to the way to elections. The rules of the Constitution as a whole shouldn't be modified with urgency due to its strong stability. This is a contradiction in essence. This is a strong defect of the legislative technique that might not lead to an unconstitutional vice of the procedure, if it isn't demonstrated that it leads to an wrongful consequence and the tort of some constitutional principle.

It is all about "adapting to new situations": the start of a secessionist process, fostered by political forces that dismiss constitutional rules. However, since the regulation has a general coverage it can be applied for other assumptions. In front of a new problem, an old solution is introduced. Executive tools are a matter of the Administrative Jurisdiction Act. Although that constitutional jurisdiction and administrative jurisdiction are of different nature: is not the same to give instructions to a Public Administration that has to obey the law, than to a Parliament or a Government. It is difficult to believe that this idea didn't occur to the big jurists who wrote the 1979 Law, but this was dismissed. It is true that they couldn't imagine such disloyalty. None of the classics of constitutional justice took responsibility for the execution and left it in the parliament and other powers' hands because they expected them to be linked to a sentence.

Now, the Constitutional Court is allowed to dispose who has to execute resolutions, necessary measures and to solve issues. Moreover, a procedure of execution is designed that allow to fine, to suspend authorities and civil servants from their functions and to require government's collaboration to adopt necessary measures when executing substitution. In fact, the resolution from which the resolution of the Catalan

Parliament was approved concerning "the start of the political process"- a provocation- than then was suspended, decreed a personal notification to several authorities. Personal requirement seems to be a previous requisite to a hypothetical conviction for a crime of disobedience, something that already happened in the Atutxa's case when what had been established by the Supreme Court wasn't fulfilled.

What can be said? The Constitution has designed ordinary and jurisdictional checks (art 153 CE), regarding acts of Autonomous Communities, together with extraordinary and political checks regarding bodies (art. 155 CE) when the "general interest is seriously attempted": the federal intervention or coercion from the State after the authorization of the Senate. Which of them do you believe should be activated if an unilateral statement of independence was issued? The reform lends a –impossible- bridge between both controls in order to have time before adopting unfixable measures and collecting arguments. However, a court can't be asked to perform a government task without erasing borders between legal and political controls. It is also possible that the Constitutional Court stays within legal boundaries, leaving execution for substitution and the command of coercion orders in the government 's hands. Will there be effective fines and penal ban too? All together isn't necessarily unconstitutional but risky.

The coercion was already applied on the 6th of October of 1934. Sometimes, History is repeating itself and this second time it does into a nightmare. Only dialogue and transaction can avoid controls to which a State can't refuse when the Constitution is seriously breached. The Constitutional Court warned that the "right to decide" is not taken into account in the Constitution but that is can become a political aspiration that can be reached through process stick to the law. Legality and democracy, without rigidities. Apart from its conciliation, there is only the jungle…