

## THE FUNCTIONS OF THE ACTING GOVERNMENT

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Acting Governments are again a current issue in Spain. This is due to the difficulty experienced in Catalonia in forming a new Government, as well as to the complex political situation arisen from the last general election, which might extend more than usually the process of formation of the Spanish Government. With regards to Catalonia, the acting Government of the regional President Artur Mas exercised its powers from 27 September 2015 to 14 January 2016, when Carles Puigdemont and his cabinet took office. In Spain, where the general election was held on 20 December 2015, the outgoing Government presided by Mariano Rajoy will not leave office until a new Government is formed according to the current composition of the Congress.

As set forth in the Spanish Constitution (Article 101), acting Governments result from: an election, a motion of censure, the loss of a motion of confidence initiated by the PM, or the resignation or death of the PM. This constitutional provision has been developed in Article 21 of the Spanish Law 50/1997. On the other hand, the Statute of Autonomy of Catalonia does not mention the role of acting Governments, which is regulated by the Catalan Law 13/2008 (Articles 7, 18 and 27). This Law includes, in addition to the cases set forth by the Constitution, the disqualification of the President of the Catalan Government due to a disability or criminal conviction.

According to this legal framework, the term of the Government is legally set to end on the day of the election, when it becomes the acting Government until the new President wins an investiture vote in Parliament, the members of the Government are appointed and the cabinet takes office. Acting Governments usually last around 40 days. However, in Catalonia it has lasted more than three months and Spain should not dismiss a similar period, or longer in case no investiture vote is successful and a new election needs to be held. Given the above, special relevance needs to be conferred to the legislation of the functions of acting Governments.

All the aforementioned laws establish limits to the functions of acting Governments, the reason being that these do not count on the confidence of the new Parliament and, as a consequence, lack the necessary democratic legitimization to fully exercise their functions. Nevertheless, this principle is opposed to the idea that the state apparatus, and especially the Executive (one of its most active powers), needs to keep functioning.

The Spanish Law 50/1997 sets forth that the acting Government's activity "shall be limited to the ordinary resolution of public affairs and shall not adopt any other measure except in the case of emergencies or general interest, both duly confirmed". In addition, according to the Law the acting Government, as well as its President, shall not: propose the dissolution of the chambers of the Parliament, initiate a motion of confidence, propose the call for a consultative referendum, pass the budget bill, propose bills or pass legislative decrees. The regulation in the Catalan Law 13/2008 is very similar to the Spanish one; however, it expressly allows the acting Government to pass regulations and decree-laws.

Setting aside the express prohibition of specific powers, there is no doubt that the performance of the acting Government revolves around undefined legal concepts such as the "ordinary resolution of public affairs" with regards to the normal duties and "emergencies" and "general interest" for exceptional cases. The first concept is most probably the one that requires a deeper explanation. To this end, the Supreme Court, in the Judgment delivered by the Plenum on 2 December 2005, opted for a broad interpretation inasmuch as "ordinary resolution of public affairs includes all those affairs whose resolution does not imply the establishment of new political orientations".