

THE KING AND THE APPOINTMENT OF THE SPANISH PRESIDENT: THE NEW SITUATION

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On 4 March the Congress of Deputies decided in second vote against the Socialist Party leader Pedro Sánchez becoming the new President. This fact is not surprising given the high parliamentary fragmentation, but it had never occurred before since the Constitution entered into force in 1978. As a consequence, a new political situation has opened up which, while being regulated by the Constitution, raises some interesting questions.

Before beginning with the analysis, it is convenient to mention a couple of things. Firstly, and according to Article 99 of the Constitution, Pedro Sánchez (leader of the Socialist Party, second party in Congress) was nominated by King Felipe VI after Mariano Rajoy (leader of the Popular Party, first party in Congress) had declined the same offer also made by the King. Secondly, the King acted in strict compliance with the Constitution in his first attempt to appoint the new President. He leded two large rounds of consultations with the representatives of the political groups with parliamentary representation and carried out with full respect his main obligation as set forth in the Constitution: the nomination of a new candidate (Article 99.1). Fulfilling this constitutional task is particularly relevant inasmuch as its aim is to prevent indefinite processes of government formation: the Congress needs to find a President within the two months following the first vote (Article 99.5).

As stated above, the new situation is set forth by the Constitution (Article 99 Sections 4 & 5). In accordance with the latter, if no candidate has obtained the confidence of the Congress by 2nd May, the King will dissolve both Houses and call for new elections. Article 99.4 lays down that “if, after this vote [the second vote for a candidate 48 hours after the first vote, which now requires single majority], confidence for the investiture has not been obtained, successive proposals shall be voted upon in the manner provided for in the foregoing paragraphs”. These words leave a certain room for the interpretation and implementation of the provision.

As mentioned by a statement released by the Crown on 7 March, the King has already construed the provision. Indeed, the King expressed “his decision not to start, by now, new rounds of consultations with the representatives of the different political groups with parliamentary representation so that they may act in the manner they consider appropriate as set forth in Article 99 of the Constitution”.

There is no doubt that this statement shows a correct understanding of the indisputable scope of Article 99.4, namely, that the appointment of a new candidate needs to be preceded by the consultations between the King and the political groups and by the confidence granted by the overall majority of the members of the Congress in the first vote or by single majority in

second vote. However, two questions arise: Could the King have immediately started a new round of consultations? And during this round of consultations, could he have played an active role in the promotion of a good understanding between the political forces so as to find a suitable candidate?

The answer to the first question is positive according to Article 99.4 of the Constitution. The answer to the second one could also be positive inasmuch as the King has the duty to arbitrate and moderate the regular functioning of the institutions (Article 56.1 of the Constitution) under the principle of institutional neutrality.

Nevertheless, given the existing confrontation and division amongst the political forces the King was careful and gave the leading role to the political parties, thus preventing the Crown's political erosion as well as being respectful of Article 99.

It would not make much sense for the King to start a round of consultations or nominate candidates which are doomed to failure. Now that the period of two months for the automatic dissolution of both Houses which would unlock the situation has started running, the King is only obliged to start the proceedings to appoint the new President upon reception of new information submitted by the President of the Congress that lets him reasonably foresee the success of the appointment.