

## **Devolution and Secession in Spain – Further Reading**

### **1. Spanish devolution**

Spain is a regional state with a system of devolution called ‘the State of the Autonomies.’ The distribution of powers between the central state and the Autonomous Communities (seventeen in total, although the Constitution did not predetermine such number) is established in the Spanish Constitution of 1978 (Arts. 148-149). The Constitution constructs a symmetrical model of autonomy by which all the Autonomous Communities can assume the same powers (*café para todos*).

JM Colomer, ‘The Spanish “state of autonomies”’: Non-institutional federalism’ (1998) 21(4) *West European Politics*.

P Cruz Villalón, ‘La estructura del Estado, o la curiosidad del jurista persa’ (1981) extra 4 *Revista de la Facultad de Derecho de la Universidad Complutense de Madrid*.

V Ferreres, *The Constitution of Spain. A Contextual Analysis* (Oxford, Hart Publishing, 2013).

I de Otto, ‘Sobre la naturaleza del Estado de las autonomías y la relación entre Constitución y Estatutos’ (1985) 1 *Revista catalana de dret públic*.

### **2. Autonomous Communities and the Spanish nation**

#### **2.1. The Constitution of 1978**

The Constitution confers a right to self-government on Autonomous Communities. The right to self-government means autonomy, but not self-determination. Thus Autonomous Communities can exercise executive and legislative powers within the framework of the Constitution, but they are not sovereign. Sovereignty is a feature that only characterises the Spanish nation. Even more, according to the Constitution the Spanish nation is indivisible and unique. Article 2 reads as follows:

The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards; it recognises and guarantees the right to self-government of the nationalities and regions of which it is composed and the solidarity among them all.

The indissoluble unity of the Spanish nation proclaimed in the Constitution forbids the existence of any other nation within the same territory. However, this unitary assertion derives in a conflict between legality and sociological reality: despite Article 2, several sub-state entities claim to be nations (paradigmatically, Catalonia, the Basque Country, and Galicia), and strive for self-determination.

X Bastida, *La nación española y el nacionalismo constitucional* (Barcelona, Ariel, 1998).

M Herrero de Miñón, *El valor de la Constitución* (Barcelona, Crítica, 2003).

J Solé-Tura, *Nacionalidades y nacionalismos en España. Autonomías, federalismo y autodeterminación* (Madrid, Alianza, 1985).

JJ Solozábal, 'Nación, nacionalidades y autonomías en la Constitución de 1978. Algunos problemas de la organización territorial del Estado' (1980) 38-39 *Sistema*.

## **2.2. The Constitutional Court**

The Constitutional Court interprets the territorial Constitution very restrictively. According to the Court, the term 'nation' only possesses a legal political meaning when it is referred to Spain, but not when peripheral nationalists use it to name their political community. In the latter case, 'nation' should be understood in a cultural sense. Since 'national sovereignty belongs to the Spanish people' (Article 1.2 of the Constitution), an Autonomous Community is not entitled to unilaterally secede, or even to call a referendum in order to decide on its integration within the rest of Spain. The only referendum which can be held to change the territorial structure is that established for constitutional amendment (Art. 168 of the Constitution), in which all the Spanish people is entitled to vote. As the Court stated, not even the Spanish government is entitled to call an independence referendum.

M Barceló, 'Reconocimiento y construcción del derecho a decidir en el sistema constitucional español,' in M Barceló *et al*, *El derecho a decidir. Teoría y práctica de un nuevo derecho* (Barcelona, Atelier, 2015).

G Ferraiuolo, 'Tribunal Constitucional y cuestión nacional catalana. El papel del juez constitucional español, entre la teoría y la práctica' in J Cagiao & G Ferraiuolo (coords.) *El encaje constitucional del derecho a decidir. Un enfoque polémico* (Madrid, Los Libros de la Catarata, 2016).

V Ferreres, 'The Spanish Constitutional Court confronts Catalonia's "right to decide" (Comment on the judgment 42/2014)' (2014) 10(3) *European Constitutional Law Review*.

G Martín, 'La jurisprudencia constitucional sobre la organización territorial del Estado autonómico y bibliografía sobre la incidencia de esta jurisprudencia' (2011) 43 *Revista catalana de dret públic*.

### **3. The case of Catalonia**

#### **3.1. The sovereign process in Catalonia**

At the moment, national tensions are particularly salient in Catalonia, where the regional Government and Parliament are leading a sovereign process (*procés*) which may end up in the independence of Catalonia.

The beginning of this process is commonly dated June 2010, when the Constitutional Court ruled out several Articles of the 2006 Catalan Statute of Autonomy (*Estatut*). Catalans felt the judgment as an attack against their autonomy and demonstrate massively against it. In 2012 the two main nationalist parties, Convergence and Union (CiU) and the Republican Left of Catalonia (ERC) signed an agreement which included their commitment to call an independence referendum in 2014. The Constitutional Court declared it unconstitutional. Therefore, although Catalans voted on 9 November 2014 (9N), it was not a referendum, but a ‘citizen participation process.’ In order to overcome the legal and political obstacles posed by the Spanish State to the referendum, nationalist parties in Catalonia interpreted the 2015 regional election as an independence plebiscite. Since they obtained a majority of seats in the new Catalan Parliament, an independence referendum will be held on 1 October 2017.

G Martín, ‘Dossier sobre el procés sobiranista de Catalunya’ (2017) 54 *Revista catalana de dret públic*.

L Payero, ‘The “citizen participation process” in Catalonia: past, present and future’ (2015) 36(3) *Liverpool Law Review*.

JJ Solozábal, ‘La Sentencia sobre el Estatuto de Catalunya: una visión de conjunto,’ (2011) 151 *Revista de Estudios Políticos*.

VVAA, ‘Especial Sentència 31/2010 del Tribunal Constitucional, sobre l’Estatut d’autonomia de Catalunya de 2006’ (2010) extra 1 *Revista catalana de dret públic*.

#### **3.2. The right to decide**

From a theoretical perspective, Catalan claims to a wider self-government are based on the so-called ‘right to decide.’ According to its advocates, the right to decide differs from the right to self-determination. Very roughly, the right to decide is an individual right, aimed to call a referendum and founded on the state legal framework –the Constitution, where freedom of speech and the right to political participation are recognised, and the Constitutional Court Judgment 42/2014. On the contrary, self-determination is a collective right, aimed to unilaterally secede and based on international law –depending on the author, however, the former distinction is not always so clear-cut.

M Barceló *et al*, *El derecho a decidir. Teoría y práctica de un nuevo derecho* (Barcelona, Atelier, 2015).

J Cagiao & G Ferraiuolo, *El encaje constitucional del derecho a decidir. Un enfoque polémico* (Madrid, Los Libros de la Catarata, 2016).

J López, 'From the right to self-determination to the right to decide: a possible paradigm shift in the struggle for the rights of stateless nations' (2011) 4 *Quaderns de Recerca*.

J Ridaó, 'La juridificación del derecho a decidir en España. La STC 42/2014 y el derecho a aspirar a un proceso de cambio político del orden constitucional' (2014) 91 *Revista de Derecho Político*.

JM Vilajosana, 'Principio democrático y justificación constitucional del derecho a decidir' (2014) 19 *Revista d'Estudis Autonòmics i Federals*.