

CATALONIA, YEAR 2016

Joaquín Tornos Mas
Tenured Professor of Administrative Law
Universitat de Barcelona

On 15 March, the Instituto de Derecho Público presented its yearly Report on the Autonomous Communities in the Senate. The Report includes amongst others the assessment of the political and institutional activity carried out in Catalonia in 2016. Some highlights:

As regards political activity, the following should be underlined. On 10 January Carles Puigdemont was appointed President of the Government of Catalonia by a vote of 70-63 thanks to two pro-independence parties, more specifically, to the 62 deputies of Junts pel Sí (Together for Yes) and eight deputies of CUP (Popular Unity Candidacy, two of which abstained from voting). After months of negotiating the new budgets proposed by the Government, however, CUP refused them over and over again and in June they had not still been adopted. In order to overcome the political crisis arising from this situation, a motion of no-confidence was presented against the Catalan President.

On 27 September the motion of no-confidence did not succeed thanks to the votes of Junts pel Sí and CUP. CUP voted for the President in exchange for the Government's promise to hold a referendum on the independence of Catalonia in 2017. However, they did not guarantee they would vote for the new budget as well. As a consequence, President Puigdemont was forced to launch, on 23 December, the National Referendum Pact and confirm he would hold a referendum in 2017, whether agreed with the national Government or unilateral ("the Catalan response to the national Government is 'referendum or referendum'"). Also, tough bargaining with CUP was expected in order to adopt the new budget. The new Budget Law 4/2017 was published on 28 March and finally counted on the support of CUP, who once again demanded the referendum, with or without the national Government's approval. These are the major facts that took place in Catalonia in 2016 and that will condition what happens in 2017.

Several social and political groups have repeatedly appealed to dialogue as an essential means to repair the relation between Catalonia and Spain. These claims, however, have not yielded results so far.

The meeting between Spanish President Rajoy and Catalan President Puigdemont held on 20 April at the Moncloa Palace (Rajoy's official residence) is worth highlighting as a first negotiating attempt. Puigdemont offered a brief proposal based on 4 thematic blocks and 46 points: the claims appeared well-funded and were applicable to all autonomous communities. Rajoy accepted addressing all the points except for the first one: the independence referendum.

All political negotiations have nevertheless been hampered by the legal proceedings going on against former Catalan President Artur Mas and Ministers Rigau, Ortega and Homs for organizing the independence consultation on 9 November 2014. Some weeks ago, they were banned from holding office after being guilty of disobeying the Spanish Constitutional Court.

In addition, in 2016 the Catalan Parliament adopted several resolutions aiming to shape the process towards independence and which were brought by the national Government to the Constitutional Court. The reason was that they did not comply with Judgment 259/2015 declaring unconstitutional and void the Catalan Resolution 1/XI of 9 November 2015 on the “launch of the political process in Catalonia following the electoral results of 27 September 2015”.

These resolutions led to different requests for the execution of the judgments pursuant to articles 87 and 92 of the Organic Law on the Constitutional Court. This was the case as regards the Resolution 5/XI of 20 January 2016 creating the Constituent Process Study Commission - with different fields of work- and Resolution 263/XI of 27 June 2016 giving effect to the Study Commission’s conclusions in a way that opposed Judgment 259/2015 of the Constitutional Court. Following an order by the Constitutional Court, the Spanish Public Prosecutor alleged that President of the Catalan Parliament Carme Forcadell had committed an offense by disobeying the Constitutional Court’s appeal to stop the implementation of Resolution 263/XI and lodged an appeal before the Catalan High Court of Justice. The Court then started proceedings and she was taken to court.

But other trouble spots arose in 2016 as well that had to do with Catalonia: further criminal cases were started against Catalan local and regional politicians, which caused a great deal of political tension. Although all these proceedings may be linked to the pro-independence process in a general way, they are based on different grounds and affect individuals with different political roles. For this reason, they cannot be all assessed in the same way.

Firstly, some local representatives were been prosecuted for tearing up pictures of the King of Spain or the Spanish Constitution, for going to work on the Constitution Day (a bank holiday), or for misplacing the Spanish or the Catalan pro-independence flags. Secondly, the Mayor of Berga and a Councilor of Vic were arrested for refusing to declare in their own criminal proceedings. A third category relates to the cases analyzed above based on the organization of a referendum on 9 November 2014. The proceedings against the President of the Catalan Parliament are of great political importance, because they involve the second political authority in Catalonia and an action that took place in Parliament.

2016 was not only about political and legal conflicts. The public administration continued to work normally and some laws were passed. Five laws and six decree-laws were adopted. They were of relatively minor significance except for the law introducing protection measures regarding the right to housing of people at the risk of exclusion (Law 4/2016, of 23 December).

However, the institutional daily work was dimmed by the stormy context of political debate, conflict and criminal proceedings.

To sum up, 2016 ended with the same perspectives with which it started, and it seems that 2017 will bring along many more conflicts arising from the tense relationship between the national and the Catalan Governments, the growing frequency of political issues brought to court for resolution, the recurring claims for a referendum in 2017 made by the Catalan Government (whether unilateral or agreed) and the negotiation proposals made by the national Government that will not be taken into account because they do not include the possibility to hold a referendum.