

Parliamentary control of the acting Government and its limitations

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Constitutional Law is a ductile law based on principles. These characteristics are even more obvious in the regulation of the parliamentary system as it stands on a series of unwritten conventions and customs, as well as on a rule of law culture (Article 1 of the Spanish Constitution) that claims for the separation of powers and a system of checks and balances. The Constitution establishes a parliamentary monarchy (Article 1.3) and enables the Parliament to “control the action of the Government” (Article 66.2), although it does not specify any exception or exclusion. In fact, there exists an identity between the action of the Government and parliamentary control. This logic has its roots in the principle of ministerial accountability, principle that has defined parliamentarism since its origins. In his book on the British Parliament, Fraga Iribarne elaborated on this point: it is not about the Parliament controlling the Executive but rather about the Parliament sustaining it through discussing with it and receiving explanations. No other situation is possible without violating the Constitution. Not even when the outgoing Government continues as the acting Government until the new one takes office (Article 101.2) precisely because it pursues its functions, albeit in a more limited manner. Any Government that is not subject to political control is nothing but a tyranny, for judicial control does not suffice.

Is the acting Government allowed to send a plan to the European Union aiming to limit the deficit of the autonomous communities and make them comply with the debt brake, without discussing it with the Parliament? The answer is obviously “no”, no matter how urgent the matter may be or if it is a matter of general interest, elements which are both necessary to justify the action of the acting Government in ordinary matters (Article 21.3 of the Law of the Government).

A completely different thing is to place reasonable limitations to the intensity and scope of parliamentary control. This should be restricted to the strict examination of the matters the acting Government is dealing with as such, leaving aside the work of the previous term. This control should aim for monitoring and accountability rather than for political responsibility in a strict sense, as the acting Government was elected by the previous Parliament and does not have the capacity of political leadership anymore. The report written by the Secretary of the Congress of the Deputies at the request of the Bureau of Congress follows this logic and should be taken into account.

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The Bureau of Congress should reach a further agreement on these limitations and not wait for the resolution of a possible conflict between constitutional bodies. Later, the parliamentary majority should approve this agreement as soon as possible to get past this impasse and avoid the risk of the Government acting too far and refusing parliamentary control without further responsibilities. The concept of statesmanship needs to be urgently recovered. Electoral calculations lying in wait for an early dissolution that no forecaster can actually prove should not become an obsession. Immunity does not offer the Government the optimum electoral position towards the citizens.

The Constitution sets forth a parliamentary system based on the classic relationship of confidence, as mentioned in several articles. Year after year, I blush every time I have to tell my students that reality has overtaken this logic, although the solution might not be as easy as adjusting the norms to reality. No motion of confidence has been submitted for years, even when the electoral program is distorted by the subsequent action of the Government. The relationship of confidence is not broken by the motion of censure either, since its constructive nature renders it unviable. And motions of disapproval against ministers, which are not a legal mechanism, are never followed by resignations. Documents issued by the State Secretariat for the Relationship with the Parliament and the Vice-presidency of Spain show an unexpected reemergence of the relationship of confidence as they affirm that if no confidence is shown there is no room for control either. Resurrecting confidence to kill parliamentarism is no less than a paradox. The result of this forced interpretation, however, blocks other constitutional principles and breaks the systematic unity of the constitutional rules, for which it cannot be accepted. But let us not beat around the bush: without political control there is no parliamentarism, no separation of powers and no representative democracy. The smell of new elections does not suspend the operation of the Constitution; it is already not very edifying to be unable to appoint a President through agreements and mutual transactions.