

## **The Senate as the Spanish territorial council**

Every time that the reform of the Constitution is put on the table, the need for the reform of the Senate is encompassed in the debate. All political parties have included the reform of the Senate in their electoral programs at some point, parliamentary commissions have been instituted in several legislative terms with this aim, and on one occasion the Government even requested a report from the Consejo de Estado, the Government's highest advisory body. Indeed, it was already in the very first years that the Senate proved not to fulfil the function for which it had been designed in the Constitution: to represent the different territories in the State's constitutional organization. The several attempts to get the institution back on track through the reform of the Rules of Procedure of the Senate have never succeeded, which makes the recurrent allusion to the constitutional reform a logical claim.

The reform of the Senate usually involves modifying its functions or composition. However, the Senate will become a "chamber of territorial representation" (as stated in Article 69 of the Constitution) only if it is transformed into a territorial council. The answers to the following basic questions will help understand this point: What is the aim of the Senate in our institutional system? Who should compose the Senate for a more adequate fulfillment of its functions?

With respect to the first question, the Senate must guarantee the participation of the autonomous communities in the decisions dealing with the functioning of the whole country. It has been proved that in the last decades many of the functional problems of the State of the autonomies had their roots in the lack of participation of the territories concerned.

One of the major problematic matters is shared competences, in particular the relation between the basic rules set forth by the State and the implementing rules that correspond to the autonomous communities. This largely unresolved issue should be addressed soon. The distribution of competences between the State and the autonomous communities might be constitutionally improved so that each institution better understands its sphere of activity and takes responsibility. However, there will always be shared competences that require a minimum common regulation set by the State in order to guarantee equivalent living conditions, the economic union or the legal unity of the whole country. This common regulation cannot be unilaterally determined by the State: on the contrary, it must count on the participation of a constitutional body that represents the autonomous communities.

It is also necessary to clarify the role of the existing institutions and procedures with respect to intergovernmental relations. In the absence of a constitutional body that serves as a meeting point for the autonomous communities, many diverse sectorial forums have emerged such as the Conference on Matters Related to the European Union, the Fiscal and Financial Council or the different sectorial conferences. Given that they are not constitutional bodies, no political responsibility can be claimed.

Additionally, it is clearly imperative that the autonomous communities participate in the adoption of specific laws such as those regulating the regional funding system or appointing the members of the different constitutional bodies. Even if the autonomous communities do not directly participate in the reform of the Constitution (another obvious error of our system), such reform would be legitimate if it was approved by a territorial chamber as well.

The new constitutional body will only represent the territories in an effective manner if is composed of the political bodies of these territories, that is, of the regional Governments. If members are chosen by the regional Parliaments, as happens in Austria, the body will follow a partisan logic. Conversely, this partisan logic is modulated by the territorial logic when regional Governments are represented: each of them will have to find a balance between the interests of its party (which obviously play a crucial role) and those of its territory, as is the case in Germany.

To summarize, we are not talking about reforming the Senate in order to give the institution more powers or bring its composition closer to the autonomous communities but about replacing it with a territorial council. It is important to underline this idea. There exists the risk that the Senate will be subjected to a cosmetic reform that gives the institution the appearance of a territorial council through reinforcement of its territorial functions but without an effective and integrating participation of the autonomous communities.