Parliamentary majorities and minorities in the functioning of the commissions of inquiry. The Commission on the Vidal case

Maria Torres Bonet

Lawyer of the Ibiza Government

The Commission of Inquiry on the steps taken by the Catalan Government towards the secession of Catalonia from Spain, best known as the Commission on the Vidal case, was established by virtue of the Resolution of Parliament 496/XI, of 28 February 2017. The reason for such Resolution were the statements made by Senator Santi Vidal about allegedly irregular actions undertaken by the Catalan Government towards the independence of Catalonia, which sparked controversy amongst the media and public opinion.

In its short lifetime the Commission has caused a new conflict between the majority and the minority political groups in Parliament. But apart from this political sticking point some elements also deserve serious thought from a legal point of view. The most relevant issue is the position of majorities and minorities in the Government's instruments of parliamentary control and will be analyzed hereunder.

The Commission of Inquiry mentioned above was created based on a legally-binding proposal made by three minority groups (the Socialists, Ciutadans and the Popular Party) pursuant to Article 66.3 of the Regulation of the Catalan Parliament. This provision was included in 2005 following the German, Austrian and Italian models and offers this possibility to minority groups, albeit only once a year.

In accordance with Article 59.6 of the Catalan Statute of Autonomy, Article 66.1 of the Regulation of the Catalan Parliament lays down the creation of commissions of inquiry about "any matter of public interest that is the responsibility of the Catalan Government". This means actions by the Government that arise public interest and that the Parliament needs to respond to through the control mechanisms. In essence, through the Parliament's political control functions it investigates the possible political responsibilities derived from specific, allegedly irregular actions undertaken by the Government. This aim of commissions of inquiry is only expressly laid down by the Regulation of the Parliament of the Basque Country: its Article 59 establishes that these supervisory bodies investigate "the existence of political responsibilities related to any matter of public interest".

This regulation makes a clear difference between the goal of parliamentary inquiries, which is to identify political responsibilities, and that of the courts, limited to criminal responsibilities. These are two different scenarios (Judgment of the Constitutional Court 39/2008, of 10 March). Within this framework, and aware of the fact that lately the Catalan political conflict is often being resolved in court, it is hard to understand that this opportunity is being missed. The Commission allows for a free and transparent political debate. However, this has not been

the aim of the majority groups in Parliament, who have expressed their disagreement with the creation of the Commission by not adopting its work plan (to which they were obliged pursuant to Article 66.4 of the Regulation).

The majority groups (Junts pel Sí and CUP-CC) voted against the adoption of the Commission's work plan proposed by the minority groups and did not submit any other proposal. Apart from constituting a breach of the Regulation, it is, as we understand it, an abuse of right. This has led to the denaturalization of the Commission already in its second session (the first session targeted at its formal establishment and the appointment of its President). The Commission also finds itself in a legal limbo, situation which had never been experienced in Parliament before: it has not been formally dissolved but it is inoperative as no appearances can be made nor final reports can be issued. As a consequence, its President has resigned and the Socialists have quitted. If the decisions taken so far are not reconsidered, the Commission's lethargy will persist until it disappears at the end of the parliamentary term (Article 202 of the Regulation).

Ironically, the exceptionality of Article 66.3 of the Regulation has led to the breach of all further rules related to the commissions of inquiry once they have been created: appearances, the adoption of a work plan, conclusions and final report to be debated and adopted in plenary session. The ius in officium of the parliamentarians who promoted the establishment of this Commission (pursuant to Article 23.2 of the Constitution) has been violated – creating such a Commission at the request of minority groups is not a one-time right but, on the contrary, an instrument for the realization of their right to information and political participation.

This situation could be redressed if the Bureau of Parliament renews the appointment of the Commission's President (Articles 49 and 62.2 of the Regulation) and adopts a new work plan given that the agreement by virtue of which the Commission was created did not set a maximum term. A follow-up of the Bureau's next steps such as the proposals made by the legal adviser on 26 May will be necessary. As a conclusion, though, it is important to insist on the fact that, when a commission of inquiry is created by minority groups, the main tasks to be developed should already be established, as well as a maximum number of appearances. Or, otherwise, the minority groups' willingness should go beyond the commission's creation and until the adoption of the work plan. All of this should be included in a future reform of the Regulation of the Parliament in order to prevent Pace's words from happening: "the majority rule applied to the control of the majority means the impossibility of controlling".

Institut de Dret Públic

Adolf Florensa, 8, 1r pis Tel. (+34) 93 403 45 35
08028 Barcelona Fax. (+34) 93 403 45 36
www.idpbarcelona.net idp@ub.edu