

The German Bundesrat as an inspiration for the reform of the Spanish Senate

Eliseo Aja
Tenured Professor of Constitutional Law

On 2 December 2015 the Universitat de Barcelona held a seminar on the German Bundesrat (literally, the “Federal Council”) that counted on the participation of high-ranking public officers and politicians from Germany. The seminar was organized by the Fundación Giménez Abad, the Friedrich Ebert Stiftung and this Instituto de Derecho Público.

It is important to note that the Bundesrat has its own special features with respect to the rest of senates in comparative law. Its members are appointed by the Governments of the 16 Länder (literally, “countries”) that are part of the German Federal Republic and the representatives of each Government vote in this sense. Article 50 of the Constitution conceives it as an instrument for the cooperation amongst the Länder in the legislation and administration of the Federation and in matters concerning the European Union.

The legislative function is the Bundesrat’s main duty. This function is carried out differently depending on whether the federal law being discussed directly affects the interests of the Länder or regulates other matters. The Secretary General of the Bundesrat, Ute Rettler, mentioned in this regard the right of veto over “consent laws”, that is, those laws that require the consent of the Bundesrat, unlike the “objection laws”, which also need the approval of the upper chamber but the opposition might be rejected by the Bundestag (the lower chamber). The 2006 constitutional reform changed the proportion between the two kinds of laws by around 20%, and laws that need the conformity of the Bundesrat now represent 40% of all the legal body.

The Secretary General underlined the role of the Mediation Committee between the upper and the lower chambers for joint consideration of bills. The meetings are confidential, an important condition for a successful negotiation. The effectiveness of the Committee has been proved: between 2009 and 2013 some 40 laws, out of the 50 that were passed, were discussed by the Committee, and an agreement was reached in all but three cases. The blocking danger often mentioned is, according to Ute Rettler, inexistent.

In addition, and as most of the administrative functions are carried out by the Länder, cooperation amongst the Länder and between them and the Federation is promoted through the regular meetings held between these institutions, as well as through other cooperation instruments available.

The Bundesrat also coordinates the interests of the different Länder vis-à-vis the European Union, and it does so through the German delegation. Indeed, the institution invests time and effort and plays a relevant role in the formation of the position of Germany in the EU affairs. The Länder also promote their interests directly in Brussels.

All other presentations, including the one made by Anna Mastromarino, Professor of Comparative Constitutional Law, as well as most of the discussion had as main topic the comparison between the German model and the other models of federal Senates.

The composition of the Bundesrat was one of the issues discussed: all Länder legally have between 3 and 6 representatives, which makes a total of 69 members. The distribution is made according to the population of the Länder in order to establish a balance between those which are more populated like North Rhine-Westphalia (18 million inhabitants) and those which are less populated like Bremen (650.000 inhabitants), but it also takes into account the role of each Land as a “new” or “old” Land, the economic capacity and other elements. The key is the balance amongst the Länder in order to avoid the formation of a dominant bloc.

One of the most relevant features of the Bundesrat is that the members are ministers in their respective Land. This means that they are politicians, members of the different political parties, but also that they are highly qualified as they run specific departments in their Governments and have the support of high-ranking public officers. The Federal Government can always attend the sessions of the Bundesrat, and this possibility becomes an obligation at the request of the Länder.

Plenary sessions are held once a month and supported by the numerous commissions and working groups. Meetings are very technical, for which reason heated discussions or applause are very unusual. During the weeks before the plenary session, the question at issue is discussed and negotiated amongst the interested Länder and conciliated with the federal interests.

Seen the lack of participation of the autonomous communities in the Spanish system, the Bundesrat is well worth considering.