

The Reform of the Autonomous State. Proposals for Discussion

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In recent months the operation of the state of autonomous communities has been in question. The economic crisis, which has forced us to examine the efficiency of all of our administrations, has meant, in the case of the autonomous state, the questioning of the constitutional model of territorial organization. The truth is, however, that many of the shortcomings of the autonomic system existed before the crisis, although the crisis has been the trigger to open the debate. Thus, beyond some shallow and contradictory proposals launched under the pressure of the economic crisis, it may be a good opportunity to try to identify what the structural problems of the autonomous states are that are affecting their proper operation, to then be able to propose reform measures. We address some of these structural problems below.

a. The first observation is that the reform of the autonomic system through statutes has very limited possibilities. The sentence of the constitutional court 31/2010, regarding the statute of Catalonia, has made it clear that the model of territorial organization is formed by the constitution and the constitutional doctrine, and so the statutes must adhere to this model. If a substantial change in territorial organization model is intended, a constitutional reform must be considered.

b. The system of distribution of powers (competencies) poses problems of various kinds. On the one hand, the latest statutory reforms have failed to clarify the respective areas of authority, maintaining the number of conflicts. On the other hand, the difference between autonomous communities has been recovered despite the fact that it is not always functional.

The economic crisis, meanwhile, has opened the debate on the rationality of the system from a functional perspective linked to the specific rules of a single market and the need to avoid duplications and their associated costs. Working from similar approaches, some autonomous communities have raised the idea of the return of some of their powers because they consider that their regional management had proven ineffective. Other communities refuse to take on new competencies, while still others from different positions call for extending self-government.

The difficulty in defining the category of basic competencies continues to generate conflicts. The jurisprudence of the Constitutional Court seems to have outlived its usefulness once it had defined the major parameters to identify the material and formal requirements of the basic competencies.

However, the social reality is quite rich and varied and requires an agreement between the state and the autonomous communities to establish in each case what the basic competencies are from the existing general criteria.

What is needed is a new, clearer system of distribution of powers, which is appropriate for the reality of a twenty-first century state, and gives a guarantee of regional powers precisely through its clarity.

c. The Constitutional Court, as the key instrument for the resolution of conflicts between the state and the autonomous communities, must regain its prestige and be complemented by the use of other existing remedies to avoid conflict. Its central position must be accompanied by alternative routes that allow for political agreement over the legal formalization of disputes. The process of making laws that directly affect the autonomous communities and the delimitation of the basic competencies should be able to be carried out through legislative procedures in which both parties, the state and the autonomous communities, can reach agreement. In this respect, the Senate should play a key role. The Sectorial Conferences (composed of the Ministers of the central and autonomous governments) should also help in the joint development of state laws that have regional impact.

Moreover, the Constitutional Court should make judgments within a reasonable time as the sentences currently have an average delay of more than seven years.

d. The complexity in the organization and operation a composed State requires mechanisms to reinforce horizontal and vertical collaboration. Sectorial Conferences, agreements, and the conference of Presidents should be mechanisms which operate in a normal way.

e. The funding model requires a substantial sustainable agreement. Every five years the LOFCA (the organic act of financing for the autonomous communities) has been modified only to address immediate concerns and without a minimum constitutional framework of reference. The Constitution should contain the essential principles of the funding model, and ensuring the application of the common system requires a multilateral agreement. At the same time some reforms should be established in the concert system of funding which exists in the Basque Country and Navarra.

f. In addition to these problems, which could be common in federal systems, in the case of Spain, it is necessary to recognize the peculiarity of some nationalities (Catalonian, Basque, etc.) and allow for the accommodation of the different peoples that make up the Spanish State.

This recognition of the singular should be achieved without constituting privileged treatment, creating a difference in the basic equality of fundamental rights, or endangering the efficient operation of the system.

We have discussed all of the above issues in the Foro Autonomías, organized by the Institute of Public Law and held in the Senate on June 25th. The Forum allows the central government, the autonomous communities and the academy to discuss the current reality of the autonomous state, identify problems and make proposals for reform.