

THE PRESIDENT OF THE SPANISH CONSTITUTIONAL COURT DEFENDS THE NEED FOR A CONSTITUTIONAL REFORM

The 5th Forum on the Autonomy was held in the Senate on 20 April. The event was organized by the Instituto de Derecho Público, the Fundación Giménez Abad and the Instituto de Derecho Parlamentario.

The Forum was opened by the President of the Senate and attended by political representatives of the State and the autonomous communities, former presidents of some autonomous communities, senators, senior members of the State and the autonomous communities and university professors. The morning session focused on the “Assessment of the State of the Autonomies in 2015”, document which will be published in the next few weeks as part of the Annual Report on the Autonomous Communities, as well as on the analysis of the content and efficacy of the agreements reached by the Joint Commissions in accordance with the procedure set forth in Article 33.2 of the Organic Law on the Constitutional Court.

In the afternoon session participants discussed about the constitutional reform of the State of the autonomies. Tenured Professor of Constitutional Law Eliseo Aja gave a speech that was followed by a round table with the Vice-president of the Government of Valencia, Mónica Oltra, the Minister of Education of Castilla y León, Fernando Rey, and the Minister of Presidency of the Balearic Islands, Pilar Costa i Serra.

During the closing conference, the President of the Constitutional Court Francisco Pérez de los Cobos made a thorough analysis of the main judgments of the Constitutional Court that have shaped the State of the Autonomies since the entry into force of the 1978 Constitution and the open model of territorial organization. After the analysis Pérez de los Cobos presented a set of particularly relevant final remarks on the current problems facing the Spanish territorial organization and the future of the Constitution.

The President of the Constitutional Court stated that the current organizational model urges a constitutional reform. Such reforms could be the solution to the problems arising from the evolution of the State of the autonomies and also ensure the perpetuation of the constitutional system. He also mentioned the two major elements that should support the necessary initial consensus: the procedure and the basic content of the reform.

Indeed, the constitutional reform should arise from smooth discussions and deep political negotiations. The calm debate should revive the consensus reached in 1978, all the more so if we take into account that the urgent need for the adoption of a Constitution does not exist today. It should also correct the errors identified and constitutionalize the basic structural elements of a new territorial model widely supported by all citizens and territories. Articles 167 and 168 of the Constitution guarantee the legal procedure.

Some suggestions were also made concerning the content of the reform. Firstly, the reform should articulate the new system for the division of competences. This should be precise and allow the institutions to maximize the effectiveness in the exercise of their powers. For instance, in terms of distribution of legislative powers and the relation between basic and implementing rules, the reform should make clear the functional scope of what “basic” means and the specific cases in which it is necessary to resort to this technique.

Secondly, special emphasis was placed on the need to institutionalize the prevention and negotiation mechanisms that are activated in case of conflict between territorial powers in order to use the Constitutional Court as a last resort. In the third place, there is also the need to reinforce the institutional collaborative mechanisms in the Constitution, which can be achieved through the reform of the Senate and the constitutionalization of the Conference of Presidents and the Sectoral Conferences.

Finally, it was stressed that the most relevant aspects deriving from the fact that Spain is an EU Member State will also need to be included in the Constitution.

All these thoughts are, as said, particularly significant given the authority of the person who expressed them. But they are also significant due to their content, as they offer a good starting point for a new process. It is certainly a complex and long process but at the same time, as many might say, it cannot be postponed anymore.