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Exclusion of Non-State-Wide-Parties from the Spanish Constitution Amendment Process in 2011

Keywords: the Spanish Constitution amendment, state-wide-parties, non-state-wide-parties, Spain, the Cortes Generales

Słowa kluczowe: zmiana Konstytucji Hiszpanii, partie ogólnopaństwowe, partie regionalne, Hiszpania, Kortezy Generalne

Abstract

The paper's main research aim is to verify the assumption that the way the Spanish Constitution was amended in 2011 means a rupture with the over 40-year-old political principle of including all parties represented in the Cortes Generales in this process. It is also indicated what disruptions it might cause in the operation of the Spanish political system. The source material selected for analysis consists of Spanish official journals and press from 2011. The applied research methods are the legal-institutional analysis and the comparative approach.

Streszczenie

Wyłączenie partii regionalnych z postępowania w sprawie zmiany konstytucji hiszpańskiej w 2011 r.

Główny celem badawczym pracy jest weryfikacja założenia, że sposób przeprowadzenia zmiany Konstytucji Hiszpanii w 2011 r. oznaczał odejście od obowiązującej przez ponad

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40 lat politycznej zasady włączania w ten proces wszystkich partii posiadających swoją reprezentację w Kortezach Generalnych. Wskazane zostanie również, jakie zakłócenia w zakresie funkcjonowania hiszpańskiego systemu politycznego mogą być konsekwencją przeprowadzenia owej procedury. Wybrany do analizy materiałem źródłowym są hiszpańskie dzienniki urzędowe oraz materiały prasowe z 2011 r. Badanie przeprowadzone zostało przy zastosowaniu analizy instytucjonalno-prawnej, a także metody porównawczej.

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I.

Undoubtedly, the Spanish Constitution amendment process in 2011 had a different political course than its adoption in 1978 and the amendment in 1992. In 1978, all political groupings, state-wide-parties, and non-state-wide-parties, which in 1977 obtained political representation in the Congress of Deputies, were involved in its adoption. The final text of the Constitution, signed by King Juan Carlos I on December 27, 1978, reconciled the Spanish right and left representatives' political positions and those of the political center and periphery, characterized by some apparent distinctive features².

In the 20th century, the Spanish Constitution was reformed only once, in 1992³. The amendment concerned Art. 13.2 and was a consequence of the adoption of the Maastricht Treaty. It granted all citizens of European Union states having permanent residence in Spain the right to vote and stand in municipal elections. The Parliament's proceedings concerning this matter indicated excellent functioning of the political compromise, which involved all the most important parties in the political decision-making process, achieved during the political transformation in the second half of the 1970s⁴.

² Constitución Española de 27 de diciembre de 1978 (BOE núm. 311, de 29 de diciembre de 1978); Ch. Powell, *España en democracia 1975–2000. Las claves de la profunda transformación de España*, Barcelona 2001.

³ Reforma del artículo 13, Apartado 2, de la Constitución Española, de 27 de Agosto de 1992 (BOE núm. 207, de 28 de agosto de 1992).

⁴ J.F. López Aguilar, *Maastricht y la problemática de la reforma de la Constitución*, "Revista de estudios políticos" 1992, No. 77, pp. 57–94.

The paper's main research aim is to verify the assumption that how the Spanish Constitution was amended in 2011 means a rupture with the over 40-year-old political principle of including all parties represented in the Cortes Generales in this process. The mentioned processes (of 1978 and 1992) are examples of consensual adoption and amendment (respectively) of the Constitution. Cooperation between state-wide parties and non-state-wide-parties ensured the Spanish political system's uninterrupted operating and maintained the state's unity. However, the way how the Constitution was amended in 2011 might have severe political consequences. The source material selected for analysis consists of the Spanish official journals and press from 2011. The main applied research methods are the legal-institutional analysis and the comparative approach.

II.

For the first 25 years, all the Cortes Generales' political forces respected the established constitutional order. Nevertheless, the situation began to change seriously in 2004 when the Spanish Socialist Workers' Party (PSOE) took over power in the state. The programme presented to the state parliament before the elections indicated four areas regulated by the Constitution that the socialists wanted to debate and eventually change. The first aim was to have the Senate transformed into a genuine chamber of territorial representation. The second one was to include the individual autonomous communities and cities that make up Spain in the Constitution. The third proposed to obtain the state's consent to enact a European Constitution that would take precedence over the EU Member states constitutions. The fourth postulated to remove gender preference from the rules of succession to the throne⁵. This draft was even presented during the candidate's policy statement for Prime Minister José Luis Rodríguez Zapatero⁶.

⁵ *Merecemos una España mejor. Programa Electoral. Elecciones Generales 2004*, <http://web.psoe.es/source-media/000000348500/000000348570.pdf> (10.02.2021).

⁶ *Debate sobre la investidura del candidato a la Presidencia del Gobierno. Sesión celebrada el día 15 de abril de 2004* (DSCD núm. 2 de 2004).

It should be noted that the programme proposals presented by the PSOE in 2004 represented the first significant attempt since 1978 to challenge the current constitutional order by one of the two state-wide parties represented in the Cortes Generales. Before the elections, they were treated mainly as a somewhat unrealistic element of public debate. Only the election victory of the PSOE on March 14, 2004, opened the way for the official commencement of a general discussion on the reform of the Spanish Constitution. However, during the 2004–2008 term of the Cortes Generales, the reform did not occur⁷.

The situation began to develop differently after 2008 when the global economic crisis hit Europe with great force. It affected in a particular manner states in the south of the continent, including Spain. As a result of the extremely rapid rate of government debt increase, financial aid from EU institutions could turn out to be of crucial importance. However, this was made subject to certain conditions. Although the relevant documents were officially unavailable, some journalists⁸ and authors⁹ report that on August 5, 2011, the then Prime Minister of Spain, José Luis Rodríguez Zapatero, received a letter from the President of the European Central Bank, Jean-Claude Trichet, and the President of the Bank of Spain, Miguel Ángel Fernández Ordóñez. The note obligated the Spanish Prime Minister to introduce a public finance discipline by constitutional regulation, significantly restricting increasing the public debt. It was also supposed to introduce the principle of the state's external priority of financial liabilities toward foreign creditors over any internal weakness, including guarantees of welfare benefits for the citizens. The letter's authors reportedly made the Spanish debt's redemption by the European Central Bank conditional upon the Constitution's requested regulation's rapid inclusion. In early 2011, the "golden rule" concept, guaranteeing budget stability for European states, was intensively promoted by Angela Merkel and Nicolas Sarkozy. However, it did not arouse enthusiasm among the heads of

⁷ E. Belda Pérez-Pedrero, *La fallida reforma de la Constitución española durante la VIII Legislatura (2004–2008)*, Navarra 2008.

⁸ E. Juliana, *La "intervención" tomó cuerpo en la catra secreta del BCE*, "La Vanguardia" 15 de julio de 2012, pp. 12–13.

⁹ J. García Fernández, *Reformas constitucionales posibles y reformas constitucionales imposibles. Notas previas de la reforma de la Constitución*, "Teoría y realidad constitucional" 2012, No. 30, pp. 311.

state, who were facing the severe consequences of the 2008 economic crisis. The only EU Member States that decided to include such solutions in their respective constitutions were Germany, Spain, and Italy¹⁰.

The exact manner in which the Spanish Constitution's reform procedure was implemented in 2011 still raises many reservations among constitutional law researchers. As it has already been mentioned, José Luis Rodríguez Zapatero received a letter signed by Jean-Claude Trichet and Miguel Ángel Fernández Ordóñez on August 5, 2011. Eighteen days later, on August 23, an extraordinary session of the Congress of Deputies was held. It was dedicated to the royal decree's content concerning improving the national health care system's quality and consistency, driving fiscal consolidation, and increasing the maximum amount of State guarantees for 2011¹¹. However, the draft document was not presented by the then Minister of Economy and Finance, Elena Salgado Méndez, but by the Prime Minister himself. It was then, in fact, that José Luis Rodríguez Zapatero officially put forward a proposal to amend the Spanish Constitution regarding the budgetary balance principle. He also noted that he had already obtained support for the draft from the opposition leader, Mariano Rajoy. The impressive pace of work on the initiative resulted in presenting a joint draft amendment to Art. 135 of the Constitution, signed by the socialists and by the People's Party politicians three days later, on August 26, 2011¹². As opposed to 1992, this time, it was not signed by representatives of regional parties. On August 30, after a debate in the Congress of Deputies, the Chamber members passed a motion to "take it into consideration" (*toma en consideración*), which in practice meant agreeing to the commencement of the relevant legislative proceedings. Of the 336 who voted, 318 voted for the procedure's commencement, 16 against, and two abstained. Be-

¹⁰ A. Bar Cendón, *La reforma constitucional y la gobernanza económica de la Unión Europea*, "Teoría y realidad constitucional" 2012, No. 30, pp. 59–87.

¹¹ Convalidación o derogación de reales decretos-leyes: Real Decreto-ley 9/2011, de 19 de agosto, de medidas para la mejora de la calidad y cohesión del Sistema Nacional de Salud, de contribución a la consolidación fiscal, y de elevación del importe máximo de los avales del Estado para 2011 (BOE núm. 200, de 20 de agosto de 2011; DSCD 2011, No. 268, Sesión plenaria núm. 254 Sesión extraordinaria).

¹² Proposición de Reforma del artículo 135 de la Constitución Española. Presentada por los Grupos Parlamentarios Socialista y Popular en el Congreso (BOCG 2011, Congreso de los Diputados, Serie B (Proposiciones de ley) 329–1, de 26 de agosto de 2011).

sides, 319 MPs voted for limiting the Chamber's work to a single reading of the draft, with 17 votes against¹³. It involved setting a deadline of only 48 hours to propose amendments to the submitted draft. It strongly limited the other parliamentary groupings' right to formulate their position and reservations in practice. Only 24 amendments were presented. Their authors were mainly parties representing peripheral autonomous communities: *Convergència i Unió*, *Partido Nacionalista Vasco*, *Bloque Nacionalista Galego*, *Esquerra Republicana-Izquierda Unida-Iniciativa per Catalunya Verds*, and *Nafarroa Bai*. During the plenary session held on September 2, 2011, all the amendments were rejected (or withdrawn earlier), while the draft itself was adopted by a majority of 316 votes, with five votes against. Twenty-nine members of the Chamber did not take part in the ballot¹⁴. As Javier García Fernández points out, the haste to amend Art. 135 of the Spanish Constitution even led to the publication of the amendments proposed in the lower chamber of Parliament in the Official Journal only on September 5, 2011¹⁵.

A similar pace of work could be observed in the upper chamber of the *Cortes Generales*. On September 6, the draft was adopted by the Constitutional Committee of the Senate¹⁶. Already on the following day, it was submitted to the entire Chamber for deliberation. Like in the Congress of Dep-

¹³ Toma en consideración de la proposición de reforma del artículo 135 de la Constitución española, presentada por los grupos parlamentarios Socialista y Popular en el Congreso (BOCG, Congreso de los Diputados, serie B, número 329-1, de 26 de agosto de 2011); Acuerdo de tramitación directa y en lectura única de la citada proposición de reforma constitucional, en virtud de lo dispuesto en el artículo 150 del Reglamento del Congreso de los Diputados (DSCD No. 269, Sesión plenaria núm. 255 (Sesión extraordinaria) celebrada el martes 30 de agosto de 2011).

¹⁴ Aprobación, por el procedimiento de lectura única, de la proposición de reforma del artículo 135 de la Constitución española, presentada por los grupos parlamentarios Socialista y Popular en el Congreso (BOCG, Congreso de los Diputados serie B, núm. 329-1, de 26 de agosto de 2011; DSCD núm. 270, Sesión plenaria núm. 256 celebrada el viernes 2 de septiembre de 2011).

¹⁵ J. García Fernández, *op.cit.*, p. 10; Proposición de Reforma del artículo 135 de la Constitución Española. Enmiendas (BOCG, Congreso de los Diputados", Serie B (Proposiciones de ley) 329-3, de 5 de septiembre de 2011).

¹⁶ Proposición de Reforma del artículo 135 de la Constitución Española (Diario de Sesiones Senado núm.561, Comisión Constitucional celebrada el martes 6 de septiembre de 2011).

uties, after rejecting all the amendments, the draft was adopted by 233 votes, with only 3 votes against. Twenty-five senators did not take part in the ballot¹⁷.

By the provisions of Art. 167 (3) of the Constitution, the adoption of the draft amendment to the Constitution by the required majority in both chambers initiated a 15-day period during which at least a tenth of either chamber's members had the right to request a referendum on the matter. However, neither the MPs nor the senators exercised this option. Finally, on September 27, 2011, the amendment's text was published in the official journal – *Boletín Oficial del Estado* and entered into force¹⁸.

III.

A brief reconstruction of the described process makes it possible to conclude that how the Spanish Constitution was amended in 2011 meant a rupture with the over 40-year-old political principle of including all parties represented in the Cortes Generales in this process. However, the exclusion of non-state-wide-parties from the process might have severe political consequences. One of the most important might be problems with forming and maintaining a stable state government. The provisions of the Constitution, and in particular of its Art. 115, make possible the creation and operation of minority governments¹⁹. However, the Spanish political system practice has shown that they have always required non-state-wide parties' cooperation. If a minority government is formed, the possibility of budget adoption also depends on their support. Finally, the lack of cooperation between state-wide parties and non-state-wide-parties in the

¹⁷ Proposición de Reforma del artículo 135 de la Constitución Española (Diario de Sesiones Senado 130, Pleno celebrado el miércoles 7 de septiembre de 2011).

¹⁸ Reforma del artículo 135 de la Constitución Española, de 27 de septiembre de 2011 (BOE núm. 233, de 27 de septiembre de 2011).

¹⁹ A. Bar Cendón, *Sobre una hipotética reforma de la potestad de disolución de las Cámaras legislativas prevista en el artículo 115 de la Constitución*, "Revista de derecho político" 1992, No. 37, pp. 149–158; P. Dudzik, *Funkcje rządu w Królestwie Hiszpanii na gruncie Konstytucji z dnia 27 grudnia 1978 r.*, "Przegląd Prawa Konstytucyjnego" 2015, No. 1 (23), pp. 159–183; J.L. García Ruiz, *Artículo 115*, [in:] *Comentario a la Constitución Española: 40 aniversario 1978–2018: Libro-homenaje a Luis López Guerra, vol. 2*, eds. C. Montesinos Padilla, P. Pérez Tremps, A. Sáiz Arnaiz, Madrid 2018, pp. 1633–1643.

Cortes Generales might threaten the Spanish state's unity. The inclusion of regional parties in parliamentary processes related to deciding on matters most important to the state, including the autonomous communities' legal position, was the basic assumption of the constitutional order in 1978²⁰. It might be of particular importance in the context of the result of the elections to the Catalan Parliament, held on February 14, 2021.

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²⁰ M.Z. Dankowski, *Geneza i konstytucyjne podstawy prawnoustrojowe autonomii baskijskiej*, "Przeгляд Prawa Konstytucyjnego" 2015, No. 4 (26), pp. 159–176.

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