The EU and the Catalan Crisis

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The events of the past week in Catalunya (and of the weeks that will follow) are very serious and worrying. Catalunya is a region of a Member State of the EU that has begun a unilateral process of independence, disregarding the Constitution, its Statute of Autonomy and the opposition of half of the Catalan population. It's a remarkable challenge for Spanish democracy. It's a challenge for the EU as well.

A personal disclaimer to start with: as a Spaniard, I am a supporter of an asymmetric federal Spain that recognizes the national identity of its peoples. I also support the right of a national community to decide by democratic means its own future. But having said all that, the events that have currently unfolded are nothing close to what independence should look like. The events are a serious threat to the rule of law, and it is important to stress it in these very terms.

There is a relevant majority of Catalans who wish to decide in a referendum about the future of Catalunya. It is not about independence, it is about the right to decide through democratic means about a community's future. This is not possible under the current Constitution of Spain, so a constitutional reform is needed. Therefore, the wish of a majority of Catalan society should be channelled, first, through a constitutional reform, and then by means of a referendum under the new constitutional rules. This is proving to be difficult, not because there is an unwillingness to amend the Constitution to deal with Catalunya, but because Spain has proved unable to substantially amend its Constitution ever since it was enacted. It is not about Catalunya, it is about a Spanish political culture that fears that opening the constitutional debate will awaken the many ghosts of Spain's bloody past.

Therefore, many Catalans feel trapped in a Constitution that is so difficult to amend, and they have good reasons to be frustrated. But so are the rest of Spaniards who want a new territorial arrangement for Spain, who want to reconsider the role of the monarchy, who want to upgrade some fundamental rights to protect the environment or to ensure social services, etc... The frustration of Catalan society with a Constitution that proves difficult to amend in order to allow a referendum on independence is understandable and legitimate. It is as legitimate as the frustration of many non-Catalans in Spain who still hope (so far, in vain) for an ambitious constitutional reform in many other fronts.

This frustration has now turned into a unilateral route towards independence, irregardless of the Constitution's clear limits. Last week the Catalan Parliament enacted a law to hold a referendum on independence that will take place on 1 October 2017. The Catalan Government immediately called the referendum official and began its preparations. The day after the calling, the Transition Act, a pseudo-Catalan provisional Constitution that facilitates the transition from the Spanish legality to the new Catalan legality in case of a victory of the vote for independence, was also enacted by the Catalan Parliament.

Needless to say, these legal acts of the Catalan Parliament are plainly in breach of the Spanish Constitution. Thus, the Spanish Government has brought actions before the Constitutional Court so that it reviews their constitutionality through urgent procedures. According to the Constitutional Court's Act, bringing such actions before the Court automatically suspends them. Therefore, the legal acts currently deploy no effects. But the Catalan Government has announced that the Constitutional Court has no authority anymore in Catalunya and the only legal force that will be recognized by the Catalan executive authorities is the one of the Catalan Parliament. Thus, the referendum's preparations will carry on. There is an open rebellion from two authorities of the Spanish

State (the Catalan Government and the Catalan Parliament) against the Constitutional Court, whose authority in Catalunya is explicitly rejected.

And this is where we stand today.

To be true, the Spanish conservative government of Mariano Rajoy has not handled the situation very wisely in the past. Instead of making an effort to facilitate some type of consultation in Catalunya, the conservative government has played the tough card, with the aim of looking strong towards its non-Catalan voters. The conservative party has a marginal electoral support in Catalunya, so its toughness with the Catalans is electorally profitable in the rest of Spain. Thus, the government's strategy so far has been to act firm, inflexible and ruthless with those who wish to break up the unity of the Spanish nation.

The situation in Catalunya today is good proof of the Spanish government's failure. However, we should not overstate this, as some parties are trying to do, in order to avoid confronting the crude reality. It is easy to stand in a neutral stance and blame both the Catalan government and the Spanish government, but the truth today is that the Catalan government and the Catalan Parliament have triggered an unconstitutional process that will amount to a breakup of Spain as a Member State of the EU. This is the crude reality that we have to face today. The blame-game can be left for later.

Is this important at all for the EU? It certainly is and for several good reasons.

First, the unilateral independence triggered in Catalunya has many common features with another worrying event for the EU. In the same vein that the Brexit vote was triggered after a divisive campaign that split British society in two, leaving deep scars that will take decades to heal, the Catalan issue has been construed on the same divisive premise. According to the polls, support for independence is below 50% in Catalan society, but the social division in Catalunya is practically the same as the one we have witnessed in the UK during the Brexit vote. The politics of societal fragmentation, so attached to Brexit and to Donald Trump, are at the very heart of the Catalan issue.

Second, Catalan independence is being bred by an impressive media campaign financed by the Catalan government and civil society. The quality of the information being spread is worrying to say the least, but it has worked. A few months ago a young Catalan journalist told me that once Catalunya became independent it would automatically become a Member State of the EU, whilst Spain would be kicked out, like Poland or Hungary, because it is not a democratic State. I thought it was a joke. It was not. He believed it for good and crossed his heart. Many in Catalunya believe in all good faith that after 1 October 2017 they will be living in an independent State. This is the result of an efficient media campaign that has been banging about independence for years and years. It has worked. It is about Catalunya today, it could be about Europe tomorrow.

Third, the EU is witnessing an outright attack on the rule of law in several Member States. One of them (Poland) has taken its Constitutional Court by assault. The assault was justified on the grounds of the lack of legitimacy of the Constitutional Court before Polish society (or so the Polish government argued). The events in Catalunya are not very different in that regard. The Catalan Government has already announced that it will not comply with the mandate of an illegitimate court (the Spanish Constitutional Court), because it is a devalued and not respected jurisdiction in Catalunya. A message that sounds terribly familiar to the Polish farce.

If reason and common sense prevails, politics and deliberation will recommence after 1 October 2017 and Catalunya and the rest of Spain will sit around a table and try to find a reasonable arrangement for the future. But in the meantime, Catalan's frustration with the Spanish Constitution cannot translate into an illiberal act of constitutional transgression. The EU cannot afford another Member State under a threatened rule of law. The EU should speak loud and clear about the importance of upholding the Constitution of a Member State. And this is not an internal issue of Spain. It concerns EU investors with significant capital in Catalunya, as well as EU residents that currently live and work in Catalunya. Above all, it concerns the pres-

tige and reputation of a Union whose territorial integrity, as enunciated in Article 355 TFEU, is being questioned.

Politics and deliberation should take the front stage as soon as possible. But in the meantime, as the full and frontal attack on the Constitution carries on in Catalunya, it is important that the focus is placed where it deserves to be. Illiberal politics are spreading fast around the globe and Europe. We should be well advised not to look the other way and start treating them as what they really are.

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