Still not a Dictatorship: Spanish Law and Judiciary in Times of Constitutional Crisis

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I write these lines after Carles Puigdemont, the deposed Catalan President, and part of his Government have fled to Brussels to evade Spanish justice, after eight ex-*Consellers* of the Government have been sent to pre-trial detention without bail, and after the appeal from the incarcerated presidents of two civil pro-independence associations ANC and Omnium to be released on conditional parole after 18 days of detention has been rejected. The scenario is terrible, also for those of us that believe that the only possible solution for this crisis is by political negotiation, and it could have been avoided. That being said – the assertion that Spain has turned into a repressive state or even a dictatorship is utterly groundless.

Our legal system considers pre-trial detention as an exceptional measure that can only be decreed during the investigation if a number of conditions are met. It must be kept in mind that it affects at least two fundamental rights of the Constitution: first, personal freedom, one of the pillars of the Rule of Law; and second, the presumption of innocence, which means that nobody is guilty until a due trial proves him or her responsible for one or more punishable conducts. Pre-trial detention means, on the risk of stating the obvious, depriving an innocent from his liberty.

I concur that the investigating judge was wrong in deciding that there was basis for some criminal offense and that there exist the conditions required to imprison a number of people investigated but still considered innocent. Nevertheless, this judge acts in a judicial framework in which mechanisms exist to revert her decisions. In fact, those provisionally deprived of their liberty can, until the oral proceedings, request as many times as they see fit to be released. I do not intend to play down at all the fact that they are imprisoned. But we must put the situation in context.

It is true that the judiciary is not showing its best side at the moment: the acting prosecutor has been reprimanded by the Parliament for his complacency towards a number of Partido Popular politicians under investigation, and there are relevant doubts about whether the Spanish Supreme Court, the Audiencia Nacional, is competent to adjudicate that issue, among others.

Nevertheless, those now investigated have potentially committed a number of criminal offenses, some of them quite severe precisely due to their institutional positions: they were the Government. And no, they are not being judged for organizing a referendum, for wanting that the people could vote; they are being prosecuted because, even though they knew the possible juridical consequences, they decided to ignore the legal order not once, but several times (some would say continuously). They are not being repressed for defending some ideas – they are not political prisoners –, but because they have tried to defend their ideas against the law. A law that had been approved by both the Spanish and Catalan Parliaments, which had been democratically elected. Are these acts criminal offenses? It is not for me to answer that question. What is clear is that they are illegal as these government members have admitted themselves. Supporting the passing of the referendum and transitory laws – remember now the counsels of the Parlament who warned that they were illegal – and making them effective, even in rather ingenious ways. It shouldn't be forgotten that Puigdemont and his Consellers departed almost clandestinely to Brussels precisely because they knew that they would be pursued.

All this happens in Spain, which is as much a state under the Rule of Law as any other surrounding state. No matter how insistently some parties keep repeating it nowadays, we are not in a dictatorship, not even close. We are in a state with imperfections that defends itself, sometimes clumsily, against what it considers an attack against its very functioning. And it does so by applying the existing rules through a justice system that, by and large (in particular with respect to the budget), works. All this doesn't preclude insisting on that this is a conflict with a political base, with legal consequences, but that will only be resolved if it is approached from dialogue and understanding of the legitimate positions of the other. In any case and as a basic condition, all must respect the same rules of the game. And that includes not twisting the political parties law or trying to convert the next elections into something they are not.

To declare the independentist parties illegal would be in breach of our Constitution. Our supreme norm does not require political parties to defend its values: it entitles parties to defend their own ideas and goals with peaceful and democratic means.

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