

8 Ally, opponent or means to an end?

The role of the European Union in the Catalan independence process

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Introduction

‘You know, that’s because this is Catalonia, not Spain’ – an older man sitting on a bench in front of his house on the outskirts of Barcelona, reached out to point at the Catalan revolutionary flag, fluttering just below his window, along with handwritten letters forming the inscription ‘democracy’. This man’s statement does not seem surprising in the context of the events of the end of 2017 and beginning of 2018, when the future of Catalonia, as a potentially independent state, became a frequent subject of political disputes and a hot topic discussed by international journalists, political scientists – and politicians in the European Union.

The Spanish Constitution of 1978 ended decades of Franco’s authoritarianism, and paved the way for the democratic transformation of this part of the Iberian Peninsula. It not only established a parliamentary monarchy but also a regional system of the state, which became both a key to preserving the richness of its cultural diversity and a source of conflict on the grounds of identity. Residents of several of the 17 regions and two autonomous cities, referring to a historically documented heritage (as well as raising the argument of having a separate language and culture), began to demonstrate a degree of identification which was different from the vision of one common Spanish state.

Catalonia possessed a distinct language (initially a local variant of Latin but formalised at the end of the 11th century), a separate culture and tremendous economic potential which were widely acknowledged. This led to it obtaining the widest range of permissions which allowed for a significant degree of self-government. By virtue of the Constitution and the Autonomous Statute, Catalans were, however, denied the opportunity to implement their own foreign policy or to grant citizenship while still being obliged to transfer a significant part of their revenue to the central budget.

These reasons, born out of a sense of economic injustice and an arguably stronger one of Catalan identity, led to the birth of catalanism in the 19th century.¹ This was neither accepted by Spanish society nor granted legal recognition in normative acts but remains a regional political doctrine which is still

the dominant guideline for nationalist politicians of the region. Growing out of the roots of provincialism, catalanism passed through successive phases of federalism, regionalism and pujolism,² finally reaching the shape of mature political catalanism. Never having had a constant form and ever evolving, it has always maintained a solid foundation shaped by elements characteristic of both nationalist and conservative philosophy, while emphasising the reluctance to use force (which may justify such late direct separatist demands and the choice of direct democracy as a tool for the implementation of contemporary independence postulates), as well as an attachment to the principles of personalistic humanism and the priority given to one's own culture (especially language). In light of recent events, this doctrine seems to have had considerable consequences, becoming both the starting point and the path leading to the implementation of certain decisions of national importance (including the self-recognition of the Catalans as a nation and their struggle for independence).

Catalonia in the history of Europe

A review of the media coverage and public statements made by numerous non-Spanish decision-makers proves that the Catalan independence movement – despite being an important issue in the European political realm – has not been properly analysed and that the idea of the independence of the region itself is treated more as an eccentric, current aspiration of the dominant political party rather than a centuries-long and well-motivated struggle. Before we proceed with further analysis, it is therefore impossible to avoid mentioning that the attempt to define Catalan identity in opposition to the Castilian cultural and political pattern was clearly being made in Catalonia as early as in the Middle Ages. Catalan culture, in contact with the stronger, Castilian one, has always been perceived by the inhabitants of the region as an object of honour and the key to the survival of their identity. This might explain why every attempt to diminish elements of Catalan culture has caused rebellion and united Catalans in resistance to the country's central government.

The breakthrough period was the 17th century, which was significant not only in the cultural sense, but above all in the political, bringing with it pioneering steps in the struggle for independence. In 1640, the first Catalan uprising broke out (known as the 'Reapers' War') and a year later Pau Claris – the then head of the Catalan government – for the first time in the history of the region officially declared Catalan independence under the protectorate of France.

In the following century, both the development of the elements of Catalan culture and the implementation of all political actions were stopped by the decision of the Spanish King, Philip V. Shortly after taking power, on 16 January 1716, he issued the New Order Decree (*Nueva Planta*), which was to help him implement his vision of centralist rule. The document abolished Catalan political institutions, revoked the privileges previously granted to the

region, and greatly limited the possibility of using the Catalan language. Yet, contrary to the plans of the Castilian monarchs, the 19th century not only brought the *Renaixença* (Catalan Renaissance), but also the political activation of the separatist spirit, which led to two attempts to declare the independence of Catalonia: the first in 1810 (when Catalans gained the support of Napoleon Bonaparte), and the second in 1873 (when an ephemeral – and ineffective – attempt was made by the then Catalan deputy, Baldomer Lostau).

An effort to constitute an independent Catalan state was also made twice in the 1930s. On 14 April 1931 – just after the Spanish local elections that resulted in a majority for the radical party – its leader, Francesca Macia, proclaimed the ‘Catalan Republic within the federation of Iberian republics’ from the balcony of the *Palau de la Generalitat de Catalunya*. Another attempt – three years later – was made by the head of the Catalan government, Lluís Companys, who, on 6 October 1934, shouted: ‘Long live Catalonia! Long live the republic! Long live freedom!’, announcing the creation of the Republic of Catalonia as part of the Spanish Federation.

Almost five decades of authoritarianism in the Iberian Peninsula and the centralist rule of Francisco Franco temporarily weakened, but failed to stop Catalan dreams of full self-government. Pro-independence sentiments systematically revived, entering the final phase in 2006 and were reflected in the drafting of a new statute of autonomy. Catalan legislators demanded a record of the primacy of the Catalan language, the possibility to create a completely sovereign judicial system, and the official recognition of the Catalans as a separate nation. Four years later, this controversial postulate was declared unconstitutional and – as such – immediately revoked. This decision of the Spanish Constitutional Court provoked multimillion people protests in Catalonia and made the idea of building their own state more vivid than ever before.

When the *Junts pel Si* coalition gained power after the elections in the autumn of 2015, President Artur Mas, the leader of Catalonia, began to openly direct his attention towards the independence of the region. After he had twice failed to gain enough votes in support of his investiture, at the beginning of January 2016 the parliament decided to appoint Carles Puigdemont as the new president. Following the path set by his predecessor, he immediately started building the foundations for an independent Catalan state. The milestone event – an attempt to organise an independence referendum (which ultimately took place on 1 October 2017 in an atmosphere of civil unrest), as well as a subsequent unilateral declaration of independence on 27 October 2017 – threatened the current political order not only in Spain, but also in other European countries (especially in those facing the challenges of regionalism, nationalism and separatism within their own borders).

In this context, the prospect of creating a Catalan Republic could set a dangerous precedent, possibly changing the shape of the political map of the

whole continent. The multitude of European regions potentially interested in disconnecting from their state centres, or wishing to attain a greater degree of autonomy, has resulted in the reluctance of European leaders to take a long-standing position on the issue of Catalonia. Both the member states of the European Union and the United States of America decided to make a declaration that the conflict was an internal Spanish problem; therefore, they did not feel entitled to interfere or mediate.

An independent Catalonia in the European Union – a real project or a utopia?

The symbols of the independence movement – whether in the form of yellow ribbons, attached to the clothes of the inhabitants of Catalonia, or slogans painted on the facades of buildings calling for the restoration of the freedom for those detained after the referendum in the autumn of 2017 – have become an almost integral part of Barcelona, photographed by European tourists with no less frequency than the architectural works of Antonio Gaudi. The fact that the so-called Catalan case has aroused the growing interest of external observers became possible not only thanks to the activities of the separatists themselves, who have tried to attract the attention of the international community, but also due to the legal, ethical and moral doubts that constitute not just the background, but rather the primary strategy of Spanish-Catalan political struggles within the European Union.

The first of the most controversial legal dilemmas was the aforementioned Catalan aspiration for legal recognition as a separate nation. The Constitutional Court stated that ‘the Constitution does not know any other nation than the Spanish (...) and only through it can the sovereignty of the Spanish state be realised’.³

Although the letter of the law leaves little room for alternative interpretations, it is impossible to ignore the question of whether this Spanish court order should only be associated with a true attachment to the idea of the rule of law, or should perhaps be considered an attempt to prevent the potential intensification of Catalan independence efforts. By acknowledging the existence of a separate Catalan nation, Spaniards might have opened the gate to a wider political, cultural or economic autonomy – and even full territorial demands (which turned out to be an accurate forecast). It is also worth noting that the Catalan intention in their struggle to have their separate nationality recognised was not purely for honourable and romantic reasons. It was a precisely thought-out strategy, aimed at preparing the ground for a planned struggle for sovereignty within the European Union, in the process of which the argument of the right of nations to self-determination would be raised. It was perfectly understood that in order to find support for its own independence in the European arena, it would be necessary to use tools which Spain’s internal laws would find it impossible to undermine – human rights.

The European Union – Ally, Opponent or Means to an End?

The conflict between the parties, seeking support for their own actions in the provisions of the Constitution of Spain or in the idea of human rights (which is a key foundation of the European Union), flared up in the period preceding the controversial independence referendum of October 2017. The central authorities tried to prevent the plebiscite and when they failed, ultimately decided to intervene with the security forces. According to Article 2 of the Constitution, the state is based on the ‘unbreakable unity of the Spanish people, the common and undivided homeland of all Spaniards’.⁴

This translates into the inadmissibility of secession of any of the regions and in the event of such an attempt, Article 155 of the Constitution authorises the Spanish authorities to use all means necessary to make the community enforce these obligations or protect the public interest – including the possibility of suspending the autonomy of the region concerned.

Catalan separatists, although they avowed respect and understanding for such constitutional arguments, decided in this discourse to draw on higher-level legal acts, international treaties that confirm the need to prioritise human rights. The parliament of the region – in emergency mode and by simple majority – adopted two key laws for the process: the law on the transition system and the law on the referendum. Both were used to justify the legal validity of Catalan actions although both – as their content was in clear contradiction with the provisions of the Constitution and the procedure itself raised many doubts – were rejected by the parliamentary opposition and the central authorities. The Catalan government has argued that – as the democratically elected power – it is pursuing the will of the voters, having on its side not only a mandate obliging them to fulfil campaign promises, but also international law. As we can read in the preamble of the Catalan Act on the referendum of 6 September 2017:

the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights – approved by the General Assembly of the United Nations on December 19 1966, ratified and binding in the Kingdom of Spain since 1977 (...) recognize the right of nations to self-determination as a fundamental human right. Similarly, Article 1.2 of the Charter of the United Nations and the Statute of the International Court of Justice stipulates that friendly relations between nations based on respect for the principle of equality and self-determination of nations must be developed.⁵

Although it is impossible to undermine this argument and question the rights of nations to self-determination, serious doubts arise when we look at Catalonia as an entity wishing to exercise this same right. The Catalans, despite undeniable documentation of their own cultural and linguistic identity,

have not been officially recognised as a separate nation by any of the EU members.

Another doubt that needs to be raised is the question of whether human rights always and unconditionally occupy a higher position in the hierarchy of legal acts and should be prioritised over the internal law of a sovereign state. According to constitutionalists, the Basic Law allows for limiting or suspending human rights, especially in situations which threaten such values as national security, public safety, public health and sometimes even public morals. It is clear that the Catalan decision to organise an independence referendum, which may entail attempts at the secession of a part of Spain and thus threatening the integrity of the state, bears all the hallmarks of the situation described above, allowing for the exclusion of certain human rights. Throughout the entire Spanish-Catalan discourse, however, no reference was made to the problem of these categories, completely ignoring the need for a debate on both legal orders, possible exclusions and justifications. As the example of Catalonia demonstrates, the lack of a public European debate devoted to the contemporary meaning of and possibilities of referring to human rights, as well as avoiding dialogue, leads to compromise barriers and deepens mutual misunderstanding, leaving the impression that the EU and its values may only be a means to an end: Catalan independence.

Was using force against voters and the problem of so-called political prisoners a European problem?

The low turnout of 43% , largely as a result of the abstention of opponents to independence, as well as the confiscation of a significant number of electoral cards, made the unconstitutional referendum in Catalonia itself an unreliable barometer of real support for secession, therefore providing no mandate to declare independence. However, this event had far-reaching consequences, drawing the attention of the European community to the problem of Catalonia, and also indirectly forcing foreign institutions to take a stand on the events in this region of Spain. The use of force against voters, as a result of which almost 900 people were injured, has been widely commented on by the international press and Human Rights Watch, who called it unjust and excessive. The latter stated,

detailed investigation into three cases found that national police and Civil Guard officers used excessive force on October 1 in Catalonia. The police may well have had the law on their side to enforce a court order but it didn't give them the right to use violence against peaceful protesters.⁶

The declaration of independence, which was announced shortly after the plebiscite, resulted in a wave of repression against representatives of the separatist movement – and therefore yet another human rights dilemma. Nine

ministers of the Catalan government and two pro-independence activists were arrested, which made the Catalan Prime Minister Carles Puigdemont and several of his colleagues leave the country and seek refuge in Belgium – not unreasonably, as a European Arrest Warrant was issued and serious accusations were made, threatening them with prison sentences for rebellion and embezzlement of public funds. Although the Catalans turned out to be strongly divided when it came to the idea of independence and the referendum, the majority proved anxious about the growing problem of such so-called political prisoners. The argument was raised that the Spanish amendment to the Penal Code from 2005 decriminalised participation in a referendum, even one deemed illegal, since between 2003 and 2005 it had carried a possible prison sentence.

A great surprise for the Catalan authorities – already banned under Article 155 of the Constitution – was the complete lack of support from European Union entities. It seems that the Catalans had not so much hoped for the recognition of a new republic (which – as correctly predicted – would require time and skilful diplomatic efforts), but at least criticism of the Spanish judiciary and of the detention of legally elected representatives of Catalan society. In the practice of international public life, it is still believed that the main responsibility for the implementation of human rights rests with the state. Responsibility is also borne by the international community, but it is of a secondary character and is mainly one of control. However, as has been noted by constitutionalists, since the adoption of the Vienna Declaration of 1993, one of the major barriers – an artificial division between internal and international human rights problems – has disappeared, obliging the international community to intervene when faced with a suspected violation. It seems, therefore, that the reasons for the inaction of the European community during the Catalan conflict should be sought elsewhere, namely in pragmatism.

Quo vadis Europe?

Addressing those dilemmas and discussing these problems in the European community is vital, as the scale of regionalist and separatist movements on the continent remains significant. For years their leaders have been watching the Catalan path to independence with growing interest and waiting for a sign of a changing political climate. Therefore, by giving support to or merely showing interest in the problem of Catalonia, the official authorities of such countries as Belgium, France, Italy, Greece, and Germany, or the European Union institutions, could be interpreted as giving a ‘green light’ to local groups demanding autonomy or independence. This perspective, albeit short-sighted, seems to have been taken seriously by policy makers, including the President of the European Commission. Jean-Claude Juncker, who stressed that ‘if we allow, but it’s not our business, that Catalonia becomes independent, others will do the same and I wouldn’t like that. I wouldn’t like a European Union in 15 years that consists of some 90 states’.⁷

Statements in the same spirit and made by other European (and world) leaders, are often accompanied by a self-justification taking the form of the statement that Catalonia would not cope as an independent state as it does not have an economy strong enough to support the creation of new state institutions and, perhaps even more vitally, that Catalonia lacks international support. Although the absence of recognition of the Catalan state *de facto* negates the possibility of this entity's existence and should therefore discourage further separatist actions, the independence process itself seems to be continuing.

Having said all that, one could ask why, despite these numerous doubts, did the Catalans decide to raise the argument of human rights and concentrate their actions on the European arena. The answer is obvious: a combination of pragmatism and of having no alternative. Regardless of whether the belief in human rights is derived from John Locke's 17th century idea of the law of nature (which guarantees every individual the freedom to decide for themselves, both in personal life and in politics), or from the contemporary libertarian theory of Robert Nozick's minimal state vision, human rights are currently the main (and in the case of some conflicts – the only) weapon at the disposal of individuals, ethnic groups, nations and nationalities trying to justify their reasons and rights in the public sphere. Formal and legal dilemmas which come up as stateless nations and ethnic groups participate in international relations, especially in the context of human rights, thus seem to present a serious interpretative challenge. Yet this is not where the problem ends. The Spanish-Catalan struggles shed light on serious ethical and moral doubts and pose an important question as to whether European values grant privileges to the individual/group at the expense of the whole community, or – on the contrary – if we are faced today with the acceptance of violations of individual/group rights in order to ensure the peace and prosperity of the majority? Which concept is 'just'?

'Justice', a key word that so often appears in European discourse, especially in the context of human rights, poses many definitional problems. Both Catalans and Spaniards (as well as the international community) use it to justify their actions, interpreting it on the basis of different criteria. However, before we evaluate any of them and choose only one interpretation, it is worth asking whether today, in this era of universal acceptance of the idea of liberal culturalism and the belief that cultural and ethnic groups have their own normative systems, are we entitled to accept any definition as universally binding? Is it legitimate to persuade people to understand justice in the spirit of utilitarianism (wherein justice consists of the sum of happiness being higher than the sum of unhappiness), or according to a liberal concept (convinced that individual rights should always come first and therefore equating justice with freedom of choice) or, finally, to view justice as a virtue (positing that virtue and morality take precedence, because only something moral can be just)? Despite the numerous doubts that encourage the acceptance of relativism, practitioners involved in the interpretation of human rights are inclined

towards the third way of reasoning. Justice should be based on universal moral principles and universally recognised ethical principles. But how strong will they prove when confronted with the priorities of modern European states, conformism and particular political interests? The question remains open.

Notes

- 1 As I proposed in my book *The Doctrine of Catalanism and the Contemporary Catalan Policy Towards Immigrants*, (Wydawnictwo Akademii Ignatianum 2017) it is worth looking at catalanism as a trend stemming from both the main trunk of nationalist thought (in its specific, pacifist form born on the basis of Spanish social realities, separating itself from negative racist and xenophobic connotations and emphasising the superiority of one's own nation over others) as well as the branch of conservative thought (emphasising patriotism and attachment to traditional national values, growing out of the sense of the uniqueness of elements of one's own tradition and culture – especially language – which is to provide legitimacy. This is not so much to calcify existing political solutions, but to make changes in the name – and favour of – the national interest).
- 2 Jordi Pujol is a longtime, former leader of the now defunct political party *Convergència and Unió*. He emphasised the inclusiveness of Catalan nationalism, suggesting that anyone who wants to be a Catalan – is a Catalan. As I argued in my book, the pujolistic '*voluntad de ser*' (will to be) had a significant influence on the later shape of Catalan immigration policy.
- 3 '*Sentencia 31/2010, de 28 de junio de 2010*', <http://boe.es/boe/dias/2010/07/16/pdfs/BOE-A-2010-11409.pdf> accessed 19 April 2019.
- 4 '*Constitución española de 1978 con enlaces*', www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/const_espa_texto_ingles_0.pdf accessed 17 June 2020.
- 5 '*LEY 19/2017, de 6 de septiembre, del referéndum de autodeterminación*', http://noticias.juridicas.com/base_datos/CCAA/604479-1-19-2017-de-6-sep-ca-cataluna-referendum-de-autodeterminacion.htm accessed 19 April 2019.
- 6 Human Rights Watch, 'Spain: Police Used Excessive Force in Catalonia', www.hrw.org/news/2017/10/12/spain-police-used-excessive-force-catalonia accessed 12 April 2020.
- 7 BBC News, 'EU Spain: Juncker does not want Catalanian independence', www.bbc.com/news/world-europe-41610863 accessed 23 May 2020.