

THE AUTONOMY OF THE BASQUE COUNTRY

Singularities. The Autonomous Tax System. The Basque Tax Contribution The Agreement State Government - Basque Authorities

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Summary

The Spanish Constitution of 1978 opted for a political decentralisation to accommodate Spain's regional diversity and to guarantee a more effective separation of powers. The Spanish model of territorial organization may be regarded as a federal system: all of the regions have a considerable level of self-government protected by Statutes of Autonomy. The Autonomous Region of the Basque Country was granted special powers, including a regional police or a separate financing system. Thanks to this financing system, the Basque Country has been able to develop a level of self-government not found in any federal state. However Basque nationalists demand for changes regarding the position of the Basque Country within the State, based on the assertion of a hundred-year-old "Basque problem". The Basque Government of the Basque Nationalist Party claims for a recognition of the right to self-determination of the Basque territories incompatible with the federal logic and the Spanish Constitution. This involves in practice breaking the bonds between Spain and the Basque Country through a confederation formula. The strategy in place invokes alleged historical rights in order to obtain new advantages, which has terrible consequences in a region where a terrorist organization kills people in the name of similar purposes.

The Territorial Organisation in Spain: the Autonomous Communities

The intention of the fathers of the Spanish Constitution of 1978 when opting for political decentralisation was to establish a form of organization of the State able to accommodate Spain's regional diversity and to guarantee a more effective separation of powers. The decision was mainly based on political grounds. The need to solve historical conflicts and to bring the nationalist parties, particularly important in Catalonia and the Basque Country, into the constitutional consensus explains why the makers of the Spanish Constitution opted for a decentralising initiative and helps to understand the features of said decentralisation.

There was a general recognition of the need to provide a quick access to full autonomy for the Basque Country, Catalonia and Galicia. However the difficulties involved in the decentralisation of Spain as it was organized in 1978 made it advisable to initiate a process moving at different speeds, both in terms of timing and in terms of the powers initially transferred to the various regions under their corresponding Statutes of Autonomy.

This situation called for an open model which was to be further defined by subsequent agreements between political forces. According to the Spanish Constitution, there would initially be two different types of Autonomous Regions: those immediately eligible for full autonomy and entitled to assume in their Statutes of Autonomy all powers not exclusively reserved to the State by the Constitution, and those initially entitled to a reduced level of autonomy, which could be increased, up to the same limit applicable to the first type of regions, after at least five years of autonomous government. Immediate access to full autonomy was not limited to any given region, but the requirements needed to get there limited this possibility. However, the Spanish Constitution established a special procedure which would allow the regions of Catalonia, Galicia and the Basque Country to directly achieve a full level of autonomy and to bilaterally negotiate the content of their Statutes of Autonomy with the State government. The power of the national Parliament was restricted to a vote of ratification of the agreements previously reached, which was to be exercised only after the Statute had been approved by referendum by the voters of the relevant region.

The Basque Country and Catalonia were the first two Autonomous Regions to be created and to reach full autonomy. The fact that both of them were governed by nationalist parties put them in a privileged position to put pressure on the successive central governments, favoured the development of bilateral relations with such governments and allowed both regions to consolidate a differentiated position. But such differences are found in a State where the position of the various regions tends towards homogenization. Through the amendments undergone by many Statutes of Autonomy during the 1990s, the powers transferred to the

various regions were substantially equalled and the devolution of education and health policies seemed to culminate the creation of a territorial organization model which is already defined as a federal system by most constitutionalists.

The Federal Transformation of Spain

Even though the instruments of coordination and cooperation, both horizontally among the Autonomous Regions and vertically between the regions and the State, may be insufficient, the Spanish model of territorial organization may certainly be regarded as a federal system: all of the regions have a significant level of self-government, which is basically the same in all regions and which is protected by Statutes of Autonomy which may not be amended unilaterally by the State; there is a judicial procedure in place, entrusted to the Spanish Constitutional Court, to resolve any disputes which might arise between the State and the Autonomous Regions in connection with the powers corresponding to each of them, and the regions have sufficient financing, defined by a coordination body comprised of representatives of all regions and the State.

The federal transformation of Spain is made evident by analysing the evolution of the proportion of expenditure managed by the regional governments (and, more particularly, by the Autonomous Regions) and by the State. In 1982, the central government, excluding the Social Security, controlled 53% of the total consolidated expenditure of the Public Administration, but this figure fell to 37.2% by 1996 and was down to 24% in 2003. Regional governments, on the contrary, managed only 14.2% of the total expenditure in 1982, but controlled 45.3% of the expenditure in 2003 (32.4% was managed by the Autonomous Regions and 12.9% by local governments). In 2005 only 23.5% of the expenditure will be managed by the central government¹ The same growth trend is to be seen in the percentage of staff at the service of the Public Administration working with regional governments (in 2004, 49.2% of the total staff was employed by the Autonomous Regions , while only 23.1% worked for the central government and 24% for local governments)².

During the current government's term (2004-2008), Spain has begun to undergo a process of statutory reforms which has been of special significance in the cases of Catalonia and Andalusia. The process is not yet completed, and it is therefore not possible at this point to predict its final outcome, but, as for the subject matter

¹-Source: *Presupuestos Generales del Estado para 2005* (2005 General State Budget), Libro amarillo, cap. VII. Financiación de los entes territoriales.

²-Figures obtained from R. Blanco Valdés, *Nacionalidades históricas y regiones sin historia*. Alianza Editorial. Madrid, 2005. p.86.

being discussed herein, it is quite obvious that this new situation will not lead to a recentralisation of the state but rather to a reinforcement of self-government.

The Singularities of the Basque Autonomous Community

As already mentioned above, the Basque Country has a Statute of Autonomy, enacted in 1979, which provides for access, from the very beginning, to the full level of autonomy provided for in the Spanish Constitution, thus guaranteeing the region's self-government and promoting respect for and development of its cultural identity.

As is the case of the other Spanish regions with an own language, according to the Statute of Autonomy of the Basque Country, Basque, or *Euskera*, is granted co-official language status alongside Spanish, and the Basque Parliament passed a law which lay the foundations for the language policy. This has made it possible to require a sufficient level of knowledge of both co-official languages in order to access most offices within the regional and local governments (a requirement which has involved a costly process of learning by those civil servants who lacked knowledge of Basque, and which has not encountered significant opposition, in spite of the fact that two thirds of the Basque population do not speak Basque). The school system established in the Basque Country encourages teaching in Basque, which is largely used as instruction language, and Basque has recently been declared as “main language” in primary and secondary education. All university programmes offered by state universities in the Basque Country are available in both languages. The regional government has also created a public broadcasting service with radio and television stations broadcasting exclusively in Basque and provides funds for the publishing of newspapers, magazines and books in Basque language. There are, in short, significant resources earmarked for promoting the Basque culture in Basque language.

There are historical and political grounds, which cannot be addressed herein, which explain why the Spanish Constitution included a first additional provision that “protects and safeguards the historical rights of the so-called foral regions [the Basque Country and Navarre]”, and whose “general revision” may be carried out “in accordance with the Constitution and the Statutes of Autonomy”.

Pursuant to this provision, which defines the singularity of the Basque Country (and Navarre), it was possible to regulate issues in the Statute of Autonomy of the Basque Country which would otherwise have required the approval of an Organic Law (creation of a regional police, internal organization by provinces and, most importantly, the establishment of a special economic agreement between Spain and the Basque Country - the so called *Concierto Económico*).

Among the special powers granted to the Autonomous Region of the Basque Country, it is necessary to point out the existence of a regional police, built, from the very beginning, as an integral police force with authority to intervene in all areas, the function of the State Security Forces being restricted to police services related to non-European or supra-European issues. However, the main differentiating feature of the Basque self-government system is the recognition of a separate financing system, with which the region has achieved a particularly significant increase in its resources, which has in turn favoured a broadening of the scope of its self-government. Thanks to this financing system, the Basque Country has been able to develop a level of self-government not found in any federal state, whose main difference lies in the abovementioned Economic Agreement, governing the tax relations between the State and the Basque Country.

There are two main rules governing this system: the Law approving the Economic Agreement with the Autonomous Region of the Basque Country (*Ley por la que se aprueba el concierto económico con la Comunidad Autónoma del País Vasco*) (defining the basic rules of the system and the scope of autonomy of Basque institutions regarding approval of tax regulations), and the Law approving the method for determining the tax contribution of the Basque Country for each five-year period (*Ley por la que se aprueba la metodología de señalamiento del cupo del País Vasco para cada quinquenio*). Both laws were enacted by the Spanish Parliament, but in accordance with the procedure applicable to single section laws. According to this procedure, the only role of the Parliament is to ratify an agreement previously reached between the Basque institutions and the State Government. Thus, the members of Parliament have no right of amendment and the State is not entitled, in principle, to modify such rules unilaterally. This ensures an advantageous bilateralism between the region and the State and strengthens the position of the region, since the approval of measures is dependent upon the existence of special agreements.

The Economic Agreement has two main characteristics. The first of these characteristics is *Tax Autonomy*, which means that Basque institutions have the power to establish the tax regulations applicable to the Basque Country and to collect, manage, settle and inspect all taxes levied (which, in practice, means all taxes except for custom duties levied on goods imported from outside the EU). The regulatory power of the region is subject to general limitations (such as restrictions imposed by international treaties and conventions which have been ratified by Spain, prohibition to hinder competition between companies or the free movement of capital, and that the regulations passed have as a result a fiscal pressure equal to that of the rest of the country) and to the specific harmonization rules applicable to each type of tax, as set forth in the law approving the Economic Agreement. In practice, the Economic Agreement grants little regulatory power in connection with indirect taxes, but gives broad authority regarding the regulation of direct

taxes (Income Tax and Corporate Tax). Basque institutions have therefore been able to develop a separate tax policy and enjoy a competitive advantage over other regions, which is particularly important given the lack of precision of the general limitations applicable.

The other defining feature of the Economic Agreement is related to the obligation *to pay a certain amount to the central Treasury, which is referred to as the Basque tax contribution* (or cupo). The logic of the system is basically as follows: Basque institutions collect taxes within the region and pay to the State the part corresponding to the expenses made by the latter in connection with issues which have not been devolved to the Basque Country, keeping the remainder to finance its self-government. This means that the funds transferred by the Autonomous Region to the State does not depend on the amount of taxes collected, but rather on an assessment of the exclusive powers of the State (the importance of which is gradually decreasing).

The Basque tax contribution is calculated by multiplying the cost of the expenses incurred by the State in connection with non-devolved powers by a coefficient which tries to represent the relative proportion of income of the Basque Country compared to that of Spain as a whole (which currently remains at 6.24%, as initially established). Taxes collected by the State within the Autonomous Region, or from persons resident in the region, and the amount of State deficit attributable to the region are deducted from the amount of expenses assumed by the State. *Tax offsets* relating to special taxes are then deducted from the resulting product (in order to prevent the region from being disadvantaged due to changes in the treatment of revenue-producing monopolies), and certain *adjustments* are made (the tax contribution being reduced by the amount of the sums transferred to the State for payment of Social Security charges and in connection with programme contracts and other agreements between the Basque Country and the State, including payment of regional police and health expenditures)³.

Since 1987, when health services were devolved to the Basque Country, the result of the financial flows between the State and the Autonomous Region have been to the benefit of the Basque Country

³-The formula for calculation of the Basque tax contribution would be as follows:

$$C = 6.24\% (\text{PND} - \text{TCS} - \text{D}) - \text{A},$$

where

C: Tax Contribution

6.24%: imputation rate

PND: value of powers not devolved to the Autonomous Region of the Basque Country

TCS: taxes collected by the State, not contemplated in the Statute of Autonomy

D: Deficit

A: Adjustments

According to data provided by Ignacio Zubiri Oria, Professor in Public Finance at the University of the Basque Country, in 2003 there was a positive balance for the region amounting to 52.9 million euros, which is equal to almost 25€ per resident in the Basque Country or 0.1% of the GDP. This means that, taking into account only regular resources (that is, excluding resources obtained from the EU), the amount of per capita resources obtained by the Basque Country is 64% higher than the average resources obtained by the rest of the regions (30% higher in percentage of the GDP)⁴. According to the above, the Basque Country (and Navarre, where the figures are very similar) has 64% more per capita resources than the rest of the regions to pay for the same public services.

Such imbalances cannot but seem puzzling, particularly if taking into account that the Autonomous Region of the Basque Country, despite being notably richer than the average of the regions in Spain, brings in more resources from the State than it pays out to the central Treasury, when it should, in fact, be among those contributing the most resources to cover the needs of the poorer regions. The reason for this apparent anomaly is mainly to be found in the formula used for calculating the amount of the Basque tax contribution, which does not consider participation in public expenditure allocated to interregional solidarity, and in the fact that the abovementioned 6.24% has remained unchanged since the establishment of the system, mainly due to political reasons. However, the benefits provided by this system cannot easily be withdrawn, given the bilateralism of the reform procedure and the need to reach an agreement on any amendments to be made.

As a result of this financing surplus, the Basque Country is able to implement its own policies in many fields, in support of political interests and local economic interests. The support to Basque economy is encouraged through the implementation of a wide network abroad, connected to the 162 Basque Centres spread over several countries, mostly in South America, four of which have delegations of the Basque Regional Government, and which are promoted by SPRI, a public company with branches in thirty countries. Other new instruments for strengthening the competitive position of the Basque economy include the recently established Basque Council for Science, Technology and Innovation (*Consejo Vasco de Ciencia, Tecnología e Innovación*) and the creation of two institutions promoting innovation (Innobasque) and basic research (Fundación Ikerbasque), provided with significant resources to attract scientists from outside the Basque Country and to create centres of basic research excellence. Thanks to the availability of economic means, it is also possible to provide sufficient resources and qualified personnel for the Delegation of the Basque country in Brussels, which is an

⁴- If resources obtained from the European Union are considered, the abovementioned resources would be 58% higher in per capita resources and 25% in percentage of the GDP.

important instrument to enhance participation of the Basque Government in the European Commission committees with regional representation and to provide information and act as a lobby for Basque economic interests in Europe.

Nationalist demands for change regarding the position of the Basque Country within the State, based on the assertion of a hundred-year-old “Basque problem” which Spain has failed to address, have historically served as an argument to obtain advantages which have by no means put an end to such demands. The relative advantage of the Basque Country over the rest of Spanish regions and the singularity of the Basque self-government compared to existing federal systems have not been enough convincing arguments to limit such demands. For this reason, the alternative discourse for the current situation, most prominently expressed in the “Proposed Political Statute for the Basque Country” (*Propuesta de Estatuto Político de la Comunidad de Euskadi*), submitted by the president of the Basque Government and approved by the Regional Parliament, is based on assumptions which are incompatible with the federal logic. Said proposal demanded recognition of the right to self-determination of the Basque territories. In practice, it involved breaking the bonds between Spain and the Basque Country through a confederation formula which cannot be explained here.

The unfeasibility of the proposal (in a region where the population is equally divided between nationalists and not nationalists) was made evident in the debate held at the plenary meeting of the Spanish Parliament held on 1st February 2005, where further processing of the proposal was rejected by an overwhelming majority. This has not, however, put an end to the strategy of invoking alleged historical rights in order to obtain new advantages, nor has it silenced the discourse of frustration, which has terrible consequences in a region where a terrorist organization kills people in the name of similar purposes.