

CATALAN LAW IN THE EUROPEAN CONTEXT

Professor Mar Aguilera-Vaqués

Mar Aguilera-Vaqués is Professor at the University of Barcelona. She teaches and researches in the areas of constitutional law, environmental law, sustainable development, democracy, freedom of expression and elections. Recently, she has also been teaching Spanish Constitutional Law and Spanish political transition at the University of Lyon 2, France. She has participated as an international observer and legal expert in different European Union and United Nations observation missions in diverse countries such as East Timor, Tunis, Zambia, Sudan, El Salvador and Cambodia. She just participated for the European Council in a training for judges in Ankara on freedom of expression, political parties and media. Her last two publications deal with Environmental Law at the European Court of Human Rights and with political participation and elections at the European Union.

Summary

The presentation will provide an overview of the Catalan law at the European context. How the Catalan institutions can tackle on the Spanish Government policies and decisions in front of the European Union. And how the European Union Law and policies are implemented in a decentralized country such Spain where Autonomous Communities have their own Governments and Parliaments. There will also be examined how this Spanish territorial decentralized structure affect the implementation of

such EU norms and its control. Finally, there will be exposed how Catalan institutions manage to participate in front of the European Union institutions. Which are the instruments that can guarantee this participation and which are the EU responses to them.

CATALAN LAW IN THE EUROPEAN CONTEXT

Recently the European Commission held that the 2010 Catalan Dubbing Law was discriminatory. The Commission understood that such Catalan Law on cinema (*Ley 20/2010, de 7 de Julio, del cine (BOE, 7 de agosto de 2010)*) was incompatible with the EU rules on the free movement of services (Article 56 of the Treaty on the Functioning of the European Union). Hence, the European Commission asked Spain (and not the Catalan Autonomous Government) to put an end to the discriminatory rules which prevented the distribution of non-Spanish films. The 2010 Catalan Dubbing Law required that 50 % of films to be distributed in Catalonia were in Catalan (including original, dubbed and sub-titled versions), except for films in Spanish which, under the Law, were exempt from that obligation, which had the effect of making the circulation in Catalonia (Spain) of non-Spanish European works more expensive, and therefore more difficult. All these dubbing requirements and exceptions were implemented just in Catalonia, including its four provinces, Barcelona, Girona, Tarragona and Lleida. And its aim was to protect the Catalan language, one of the two official languages –together with Spanish—in Catalonia. Nowadays, considering that every Catalan speaks both Spanish and Catalan and in any case, if anyone speaks just one of the two it is the Spanish language it was at least reasonable that the Catalan Autonomous Government did not require the

dubbing of Spanish speaking films. In effect, the purpose of the 2010 Catalan Dubbing Law was to promote the Catalan language which is, not only, one of the two official languages of Catalonia but also the *own* language of Catalonia. Additionally, during Franco dictatorial regime Catalan language was forbidden and Catalan identity besieged. Therefore, the 2010 Catalan Dubbing Law aim was to promote such hounded minority language. After democracy was implemented in 1978 many regulations such as the 2010 Catalan Dubbing Law have been passed and filled constitutional by the Spanish Constitutional Court. This context explains why the Catalan Law did not require Spanish speaking films to be translated into Catalan. All Catalan speaking persons speak and understand perfectly Spanish. All Catalan speaking persons are bilingual. And most of them speak better Spanish than Catalan due to this repression towards Catalan language during so many years.

But the requirement of the 2010 Catalan Dubbing Law exemption regarding Spanish films presented some questions and the Commission considered that the Law was discriminatory and therefore the Commission's requested the Spanish Government to solve such discrimination. The Commission demanded Spanish authorities to notify the Commission within less than two months that they had put an end to the Catalan discriminatory rules. The Commission recalled the Spanish Government that if they would fail to do so, the Commission would refer the case to the Court of Justice of the European Union.

The Commission agreed that the general objective pursued by the Catalan Law was completely legitimate. The Law was designed to promote cinema

and support the development of choice of Catalan films. Article 18 of the 2010 Catalan Dubbing Law obliges distributors to deliver all films distributed in Catalonia with a version in Catalan (dubbed or sub-titled) but the Spanish films (since every Catalan speaking person perfectly speaks and understands Spanish language). The Commission pinpointed that the obligation itself was incompatible with European law because it exempted Spanish films in their original Castilian version and is therefore discriminatory. For the European films concerned, the law entailed an additional cost of between EUR 25 000 and EUR 77 000 for dubbing, or between EUR 2 000 and EUR 5 730 for sub-titling, which increased the cost and therefore renders access to the Spanish market more difficult for non-Spanish European films. Nonetheless, the Law provided for a derogation for films distributed in less than sixteen copies, but more than half of non-Spanish European films distributed in Catalonia were still affected.

The Court of Justice of the European Union has recognized that national policies pursuing the objective of language promotion are lawful (C-379/87).¹ However, it stated that the measures implementing them must fulfil certain conditions in order to be considered justified under the Treaty: they must be proportionate in relation to the aim pursued and must not bring about discrimination against nationals and goods of other Member States. European films are indeed goods that benefit from the principle of free movement enshrined in the Treaty on the Functioning of the European Union in the same way as other goods and services. Moreover, has stated the European Commission in many occasions, their circulation contributes to the objective of greater understanding between European citizens.

¹ Judgment in Case C-379/87 *Groener* [1989] 3967, paragraph 19.

Accordingly, the MEDIA programme² implemented by the European Union³ supports the European audiovisual sector and is intended, inter alia, to ensure better circulation of European films, more diversity and choice for the public, as well as to strengthen the competitiveness of the sector. The European Union has proposed to allot more than EUR 900 million of aid to MEDIA with its new programme ‘Creative Europe’ for the period 2014-2020.

To sum up, the European Commission stated that the restriction on the circulation of non-Spanish European films was discriminatory and against the European Union Treaties and it was because all of this that required the Spanish Government to give an end to such discrimination threatening the Spanish Government to bring Spain in front of the European Court of Justice.

But the issue was that this was a regional Law. The 2010 Catalan Dubbing Law was a norm enacted by the Catalan Parliament under its competencies stated in its own Autonomous Community Statute and on the other hand, the one responding in front of the European Community was the Spanish Government. Because it was the Spanish Government the one that signed the agreements that brought all Spain into the European Community when in 1985 Spain joined the European Community Treaties together with Portugal. Since then, Spain has signed all the other treaties that have followed the original ones. Because nowadays the European Union is built

² http://ec.europa.eu/culture/media/index_en.htm

³ Decision No 1718/2006/EC of the European Parliament and of the Council of 15 November 2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007), OJ L 327 of 24.11.2006, p. 12.

on all these European Community treaties that at first did not take into account the territorial structures of its member states. Neither the Spanish decentralized territorial structure.

Spain, joined the European Community by means of article, 93 (Chapter Three, International Treaties) of the current Spanish Constitution of 1978. Article 93 of the Spanish Constitution states that: “By means of an organic law, authorization may be granted for concluding treaties by which powers derived from the Constitution shall be vested in an international organization or institution”. Article 93 of the Spanish Constitution also lays down that “It is incumbent on the Cortes Generales or the Government, as the case may be, to guarantee compliance with these treaties and with the resolutions emanating from the international and supranational organizations in which the powers have been vested”. Referring here to the Spanish Parliament (Cortes Generales) and the Spanish Government.

Following the article 93 of the Spanish Constitution provisions Spain has yielded national competences to the European Union through the EU treaties. Accordingly, the European Union institutions create an important amount of regulations and politics that have an immediate effect on the EU member states and citizens. And member states, specifically its governments will have to respond to the EU, will have, indeed, to implement such regulations. This is the case of Spain. But as said, Spain is a decentralized state. Spain has seventeen autonomous communities (similar to the United States states), and each of them has its own Statute (similar to the United States state constitutions), Parliament, Government, legislation, administration, etc. In this context and thereby, Catalonia, the

Catalan Autonomous Community, also granted some of its original autonomous powers to the European Union.

Catalonia, has this powers based upon article 2 of the 1978 Spanish Constitution which states that: “The Constitution is based on the indissoluble unity of the Spanish nation, the common and indivisible country of all Spaniards; it recognizes and guarantees the right to autonomy of the nationalities and regions of which it is composed, and the solidarity amongst them all”. Therefore, Catalan powers and autonomy are based on such article, among others, of the Spanish Constitution.

At first the Spanish Government thought that since it was him the one responding in front of the European Union, the one threatened, the one that in case of incomppliance would be taken in front of the European Court of Justice, etc; since it is the Spanish Government the one and the only one responsible in front of the European Union institutions; then, the Spanish Government thought that the redistribution of powers between the central powers and the decentralized ones had to be revised. However, the Spanish Constitutional Court (*Tribunal Constitucional*) which is the Court entitled to review the Constitutional questions and the conflicts between the Spanish Government and institutions and the Autonomous Communities stated through an extensive jurisprudence that the incorporation of Spain to the European Union could not imply in any case a weakening of the structural principles that underpin the Spanish Constitution, And, as obvious as it is, all this presents some complexities. The first question that has to be raised is: How to know who will be in charge of the effective implementation of the EU law? The Spanish Constitutional Court, the one in charge of the interpretation of the Spanish Constitution and in resolving such topics, has

been very definite: it will have to be decided taking into account the subject-matter. The *ratione materiae* is the key. The Spanish Constitutional Court has out righted that “the implementation of the EU law binds all public powers and it is not a new power/competence” (Spanish Constitutional Court Case STC 252/1998).

In 1991 the same Spanish Constitutional Court avowed that “nor article 93; neither, article 149.1.3 both of the Spanish Constitution can be used to expand current powers/competences” (Spanish Constitutional Court Case STC 236/1991). And three years later, in 1994, added that “in this sense, EU law is like internal law” (Spanish Constitutional Court Case STC 164/1994).

Another aspect to consider is that article 149.1 of the Spanish Constitution settles that: “1. The State holds exclusive competence over the following matters; [...] (iii) international relations”. From the beginning, when the 1978 Spanish Constitution was passed, has been raised what has to be included under the international relations power. What do we mean by international relations? For instance, Catalonia (the Catalan Autonomous Community) and the Basque Country (the Basque Autonomous Community) have opened international commercial offices all over the world and specifically a Catalan office in front of the European Union. The European Union so far has been blind to the territorial structure of the stated but, on the other hand, permissive.

The current Catalan Statute (similar to a United States of America states constitutions) of 2006 establishes in articles 184-192 that, among other

requirements, Catalonia: can participate on the election of the EU Regional Committee, can attend the Council (with a common Spanish approach, Catalan civil servants can participate in Commission committees and meetings and have a Catalan delegation in front of the EU institutions.

Moreover, the 2/1997 Spanish Act regulates the Conference for EU affairs (CARCE). And there are other agreements (such as the CARUE) that try to assemble a common Spanish approach and try to gather the different territorial approaches. All these tasks should be carried on by the Spanish Senate but unfortunately this Spanish institution does not solve such questions due to the way that is designed by the Spanish Constitution. The Spanish Senate should be an institution representing the different Autonomous Communities but as a matter of fact it is not.

Finally, there is article 155 of the Spanish Constitution. This article yields Spanish Government coercive instruments for extreme situations. It could only be applied under exceptional circumstances and only if some very specific clauses and strong requirements were found. Such article states that: “1. If an Autonomous Community does not fulfil the obligations imposed upon it by the Constitution or other laws, or acts in a way seriously prejudicing the general interests of Spain, the Government, after lodging a complaint with the President of the Autonomous Community and failing to receive satisfaction therefore, may, following approval granted by an absolute majority of the Senate, take the measures necessary in order to compel the latter forcibly to meet said obligations, or in order to protect the above-mentioned general interests. 2. With a view to implementing the

measures provided in the foregoing clause, the Government may issue instructions to all the authorities of the Autonomous Communities”.

Lately, the Catalan Government and an important amount of the Catalan population has been claiming more autonomy for Catalonia and from this population another large amount, and also the current Catalan Government, is seeking independence for Catalonia and pleas for a referendum on such topic emulating the Scottish referendum on independence from the United Kingdom. The Spanish Government is not responding to such requests.

Ultimately, the result of all the issues discussed here is that the 2010 Catalan Dubbing Law was struck down. Catalonia dutifully followed the Spanish Government instructions. Spanish Government could then well meet the European Commission demands. And so, the Spanish Government –not the Catalan one— got rid of the threat of being taken in front of the European Court of Justice.

In Manhattan, New York, there is now an office, a stunning commercial and cultural office. At the main entrance of this office there is a golden plaque with this inscription: “Government of Catalonia. Delegation to the United States of America”.