



Independent views in freedom

## The silence of the Constitutional Court

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For a year now, Spanish citizens have been suffering from a series of arbitrary restrictions on our fundamental rights and freedoms set out in the sanctum sanctorum of our Constitution. Indeed, those "inviolable rights that are inherent to us", the freedom of movement, the right of assembly or freedom of worship, have been suspended or limited by the central government and later by the regional authorities under the alibi of an epidemic and the cover of a dubious state of emergency criticized by prestigious jurists. Even more worryingly, this state of emergency was extended for six months with powers delegated to the Autonomous Regions, exceeding the spirit and the letter of our Constitution, which, concerned with any potential abuse, wanted to underline its exceptionality by limiting its duration, determining a temporary unit of measure of 15 days. Shielded by such a shameless, unlawful overreach and granted for the first time such huge powers, our regional authorities have lost their marbles and have competed (from their ivory towers and feudal palaces) to see who would approve the most absurd, whimsical, dictatorial and unscientific rules "to fight covid", blind to their null epidemiological results and insensitive to the suffering and ruin they cause (until polls' winds turn, of course). With the greatest astonishment we have witnessed, for example, the totalitarian nonsense of the Galician government with its probably illegal and clearly immoral coercive vaccination program, or the hypocritical discourse of the Andalusian government crying crocodile tears while shutting down its economy and condemning its region (already the second poorest in Spain) to chronically become Third World. That Madrid's region can objectively be considered the champion of openness only proves that in the kingdom of the blind the one-eyed man is king.

At the initiative of our amoral and incompetent central government led by radical socialist PM Sánchez and even more radical Communist deputy PM Iglesias, the majority of political parties approved in Congress the current regime of semi-freedom of Spaniards (conditional, limited and under probation) "for their own good". This ruse of "give me your freedom and I will give you security" is typical of totalitarianism, a slope down which we have been slipping for years and an end to which each abuse of the political class brings us closer and closer. The house arrest of the population, who were eventually allowed to walk for a couple of hours in the courtyard like the most dangerous prison inmates; the "curfews" and "safe-conducts", terminology typical of dictatorial regimes; and the abusive police actions, endowed with a dangerous messianic character that justifies everything (get out of the way, we are saving Humanity!), make up a frightening Orwellian



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dystopia. The most disturbing thing is that part of the population, frightened and dumbed down by enormously efficient media terror campaigns, already finds the shackles comfortable and with all naturalty wonders "what will the political authorities allow me to do next week".

The Constitution exists in order to avoid all these abuses, being a fundamental law that protects minorities from majorities and the governed from the rulers. It also protects citizens from themselves when, dominated by passions or deceived by false promises, they vote for scoundrels who subjugate and ruin them. In this context of mind-boggling suspension of rights and liberties, the third political party in Congress presented almost a year ago a first appeal before the Constitutional Court on the scope of the state of emergency followed by a second appeal on its brutal extension, four months ago, but the Court remains completely silent. That is to say, that in the face of the suspension of fundamental rights of the entire population for months on end, the supposed guarantor of the Rule of Law says nothing and looks the other way. How come? The reason cannot be having more important or urgent matters to solve, since this is the most serious and relevant issue that has ever passed through its hands. This leads us to suspect that one explanatory factor is simply that the party that presented the appeal is not "represented" in the Court, while those who are represented voted in favor of the population's imprisonment and have no interest in questioning it (on the other hand, the Court's own deafening silence is obviously an indication that the current state of emergency is clearly unconstitutional). In fact, there are precedents of how the shadow of politics appears to interfere in the response times of the Constitutional Court every now and then. In the extreme of speed we have the sentence that allowed political party "Bildu" (the pro-Basque Marxist terrorist group ETA's party) to run in the elections following the shameful and treacherous roadmap agreed by the then Socialist government to end ETA's terrorist activities (after having killed in cold blood nearly 900 men, women and children). Back then it took only 48 hours for the Constitutional Court to pronounce itself saving Bildu's electoral campaign, and it did so by contradicting a previous and reasoned sentence of the (less political) Supreme Court. The unusually harsh tone of the dissenting vote formulated by the prestigious and independent constitutionalist Manuel Aragón (then a respected member of the Constitutional Court) is an eloquent reflection of the contrived "judgment of intentions" that the Constitutional Court made of the Supreme Court ruling: "improper (...)", "regrettable (...)", "gratuitously affirming in contradiction with what was previously stated in the ruling itself (...) departing from our reiterated doctrine on the matter ...".

In the extreme of slowness we have the paralyzed appeal of unconstitutionality on former Socialist PM Zapatero's abortion law presented by then opposition leader Rajoy (from the Popular Party), busy as he was deceiving his electorate with



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promises that he would never fulfill when elected PM in spite of his subsequent absolute majority. Almost eleven years later (yes, 11), the Constitutional Court is yet to rule about it, and I can only find one explanation. For Rajoy it was a political masquerade, and when he reached power he decided not to "stir up" such a "sensitive" issue, betraying his voters (and his then Minister of Justice, who felt obliged to bitterly resign) like the scorpion in Aesop's fable. Coinciding with the loss of interest of the bipartisan puppeteers, it seems that the Court decided to put it in a drawer and forget it. These actions are exempt from liability, since in Spain the political-bureaucratic "élite" is de facto above the rules that binds the rest of us and is almost never responsible for the consequences of their actions, delays or omissions, except for serious, public and flagrant crimes.

The greatest protection mechanism of any Constitution is its arduous process of modification through reinforced majorities, so the always astute political power soon understood that the easiest way to cross its red lines was to control the institution in charge of interpreting the Constitution itself. Hence the will to control the judiciary, especially since the Socialist Party outrageously modified the criteria for the election of the General Council of the Judiciary in 1985. It is surprising that the Constitutional Court allowed such an obvious transgression on condition that the constitutional spirit was not violated, that is, that the parties did not abuse, that is, that the hyenas became herbivorous. Since then, some parties have criticized the system from the opposition only to enjoy it once they grabbed power: the electoral program of Rajoy's Popular Party in 2011, prior to its absolute majority, cynically promised to "promote the reform of the General Council of the Judiciary so that, in accordance with the Constitution, twelve of its twenty members be elected by and among judges". Not only did he do nothing, but today the Popular Party continues to worry about how to "control it from behind" (in a leaked message from one of its Senate leaders).

When the Rule of Law's defense of last resort is negligently silent and turns a blind eye on certain matters in suspicious harmony with the political power that appoints its members, it is the duty of a free citizen, if he wants to remain free, to denounce it. The impudent neglect of duty by which the Constitutional Court postpones sine die to rule on an admitted case of enormous importance is a blatant injustice that causes enormous damage to the nation and drags the institution to a level of disrepute unworthy of a European country, another example, an a very serious one indeed, of the institutional degeneration that plagues Spain.

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