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The role of the Constitutional Court in the state and society in Spain

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Twenty years ago, the evolution of the Spanish Constitutional Court was one of the unknown factors that our Constitutional text had in its clauses, not the only one, but it was certainly one of the most important. There were two reasons in particular that contributed to creating this climate of uncertainty:

a) It was a new figure or institution in our legal system; maybe it is important to remind you that the Constitutional Court is not part of our judicial branch, even though it performs jurisdictional activities. It is an independent body created by the Constitution, what we call a Constitutional Institution. (Article 1 of the Organic Law on the Constitutional Court, establishes the following: "The Constitutional Court, as the supreme interpreter of the Constitution, shall be independent of the other constitutional bodies and subject only to the Constitution and this organic law").

b) The very important functions that the Constitution reserves to this special institution. Article 161 (1) of our Constitution prescribes that "The Constitutional Court has jurisdiction over the whole Spanish territory and is entitled to hear: a) Appeals against the alleged unconstitutionality of acts and statutes having the force of an act. A declaration of unconstitutionality of a legal provision having the force of an act and that has already been applied by the Courts, shall also affect the case-law doctrine built up by the latter, but the decisions handed down shall not lose their status of *res judicata*; b) Individual appeals for protection (*recursos de amparo*) against violation of the rights and freedoms contained in section 53 (2) of the Constitution (basically human rights), in the circumstances and manner to be laid down by law; c) Conflicts of jurisdiction between the State and Self-governing Communities or between the Self-governing Communities themselves; d) Other matters assigned to it by the Constitution or by organic acts".

Right now, in the 21st century, things have cleared up, and our Constitutional Court has acquired an essential place in our State and has played an important role in our society for the implementation of our Constitution. I should also point out that this body has reached an important position within the rest of our constitutional institutions, especially with those belonging to the judicial branch.

We can state so far, an important lesson looking at the work that has been done by the Constitutional Court in the last 20 years: THE CONSTITUTIONAL COURT HAS BEEN ABLE TO ACHIEVE THE DUTIES THAT OUR CONSTITUTION CONFERRED TO THIS BODY. This shows us that the design drawn by our Constitution was reasonable, that the different competences that were given to it could be performed, and the most important idea, "the creation of a new jurisdictional body by the Constitution was not just something unreal created by the fathers of our Constitution", it is an important and essential body for the evolution of our democratic State.

Nevertheless, the functioning of the Constitutional Court has been questioned many times in several different ways, especially in these ones:

a) The idea of a democratic state as a Constitutional State
b) The direct effect of its provisions and the supremacy of the Constitution
c) The Constitutional Court as the supreme interpreter of the Constitution.

But these problematic issues fall down if we take a brief look at the provisions of our Constitution. Constitution is about fundamental rights and liberties, about democracy and national sovereignty that belongs to the people, and about different levels of power between the central and regional administrations that have self-governing powers, etc. In the correct implementation of all these subjects, the Constitutional Court has played a fundamental role since 1980, ensuring the effectiveness of the constitutional provisions by the performance of his jurisdictional competences.

As our first Chairman of the Constitutional Court established: "the most important mission of the Court is to contribute – by the performance of its duties – to the development of our constitutional state, in the way that each and every public body performs its activities in accordance with the constitutional clauses".

After this first statement, I would like to explain some of the problems and dysfunctions that affect the work of our Constitutional Court. I will briefly go over these issues, from what I have called the four dysfunctional approaches:

1. - <u>The qualitative approach</u>

This approach connects immediately from what our democratic state – subject to the rule of law – demands from the Court. Firstly, as the body entitled to hear individual appeals for protection against violation of the rights and freedoms contained in the Constitution; secondly, as the body that solves the conflicts between the State and the self-governing Communities; and thirdly, when it knows about the conflicts between the constitutional bodies of the State.

Currently, the issues concerning the protection of fundamental rights play the most important role in the work of our Constitutional Court. Especially in the way of shaping the meaning of its *"essential content"*, building an extremely important doctrine in how to interpret what it is essential on a fundamental right and what it falls outside the scope of the special protection of the fundamental right. In this duty, the doctrine established by the European Court of human Rights is very important for the Court.

In the issues concerning the distribution of competences between the State and the self-governing Communities, the Court has developed an important doctrine, in the definition, configuration and I should say pacification, of what we called "the building of the State of Autonomous Communities". The ambiguous provisions laid down by our Constitution when it defines the territorial organisation of the State, has lead to many conflicts of jurisdiction between the State and the Autonomous Communities.

Also there has been a modification of the Organic Law on the Constitutional Court, including a new action called "Conflicts on local autonomy" that tries to preserve the independence of the local bodies in the performance of their duties assigned by the Local Bodies Act of 1985.

On the other hand, the Court has not been involved in questions about conflicts between the Constitutional bodies of the State.

2. - Quantitative approach

The amount of work that the Constitutional Court is receiving is highly increasing every year.

The Court has delivered 242 judgements in 1999. This number of resolutions is too high in my opinion, if you compare them with the number of judgements delivered by other Constitutional Courts as the US Supreme Court or the German Constitutional Court (especially if you compare the number of citizens of these countries and the number of citizens in Spain)

So this could lead us to bring up two questions: "Why should not this Court increase the number of judgements?" and "How can it reduce the amount of work?"

Trying to answer the first question, we should take into account that the Constitution establishes that the judgements of the Constitutional Court shall be published in the Official Journal, with the dissenting opinions, if any. I understand that the reason that explains this constitutional provision is to transmit the idea that the legal facts of the judgement should interest everyone. The constitutional provision is very clear in the sense that constitutional judgements can be read by all the Community, and not only by a reduced number of legal experts. From this point of view, it will not help the purpose of the Constitution if the Court delivers a high number of opinions.

On the other hand, the fact that the Court has to solve an extremely high number of cases will not help build a good doctrine. The judges need time to study the cases and to think about them, especially when we are talking about constitutional issues. In this way, it will not help at all if the Court is just a manufacturer of judgements.

3. - Temporal approach

I call the temporal approach the period of time that goes between the beginning of a constitutional procedure and the end of it.

Since the creation of this body, the Court has been accumulating a big waiting list of cases without any decision. In fact the full Court has still 7 cases to solve, the procedure of which started before 1993. If we talk about the two Divisions, the period of time to solve a case is about three years.

This reality does not contribute at all in making society involved in the work of the Court, and of course makes weaker constitutional justice.

4. - Prospective approach

Finally, it is important for the Constitutional Court to think over its activities and duties in order to perform the way it operates. I have gone over some of these reflections, especially from a legal perspective, examining their jurisdictional mission. But there are others concerning its own *modus operandi* and its internal bureaucracy.

In this sense, on one hand, our Constitutional Court has strengthened its Research and Library Departments. On the other, it has created his own web page, where everyone can find the latest judgements made by the Court. This web resource has facilitated access to the Court for citizens. Because let's face it, in Spain and I guess I can say in every European country, people do not read the Official Journal everyday, but a lot of people have access to Internet, so it seems much easier for an average citizen to read a constitutional judgement on the web page, than in the Official Journal.

In conclusion, I can affirm that our Constitutional Court has achieved great success in the implementation and development of our Constitution and democracy in Spain. Nevertheless there is still work to be done, and in this brief report I have tried to point out some of the guidelines, that in my opinion, have to be improved by the Court, to continue its duties of interpreter of the Constitution.