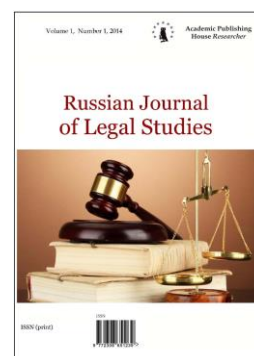


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Catalonian Separatism and International Law

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Abstract

The Catalan Separatist movement tries to convey itself as a democratic strive for freedom from the Spanish State and Government, whom it considers to steal from its wealth and ground its national identity. It calls for a democratic and political solution to the Catalan struggle, by holding an in or out referendum from which it could establish its own state independent from the rest of Spain. Those cries for democracy are contradicting with the manner in which the separatists attempt to hold the popular consultation, by ignoring the laws they voted for in the Spanish constitution not half a century ago; using a political speech that bends and misinterprets EU legislation to try to convince hopeful voters of a Catalan Republic within the EU. The speech also holds over-optimistic views over the consequences a unilaterally independence declaration would entail; this explains the general belief most Catalans have, that the newly founded republic would be reintegrated within the international system with ease, Europe, NATO and the UN would welcome it in open arms after centuries of evil Spanish oppression.

The advantages within Spain may be taken for granted, but the consequences of separation would be an immediate grim reminder. Every Spaniard in the Catalan region enjoys free movement, a vast open market; a competitive currency; 28 states backing him up militarily and the privilege of being born in the oldest nation state the world has known. Who would ever want to leave?

Keywords: Spain, Catalonia, Separatism, Independence, NATO, European Union, International Law, Referendum, Recognition

Introduction

Spain has a bad run over the last 7 years; recent optimism [1] clashes with a youth unemployment of 50 %, an ever present migrant crisis and of course, Catalonia.

The separatist movement in Catalonia makes every effort to make its voice heard. Human Chains [2] around its borders with the rest of Spain, or the massive use of independence flags in F.C. Barcelona games [3], make good material for press bulletins.

The media therefore has played a role in portraying the movement in Catalonia as a fight for freedom between Catalonia and its evil Spanish masters; but all the ingredients for such an image are there.

It is the intent of this paper to explain the context in both:

- Why Catalonia can't be independent is what I have set out to explain in this article; from its international ties and benefits it enjoys as being a part of Spain, to the Spanish legal system and European Union policies.

- Why it shouldn't be; focusing on the economic future an Independent Catalanian Republic would face; international isolation and general loss of relevance.

Materials and methods

Various sources of information were considered whilst writing the paper. Judicial documents include the 1978 Spanish Constitution, EU foundation treaties and General Principles of International Law. Journalistic sources were only considered when official political, state or organization views were conveyed through press statements, thus EU, NATO or Spanish policy regarding certain topics could be identified and included in the paper as objective information.

The method of analysis involved a counter-narrative approach, in which pro independence rhetoric by Catalanian politicians and arguments were scrutinized based on various methods of interpretation of international law: Grammatically, regarding the word-by-word interpretation; historically, considering historical meaning and context of law; Logically, when considering inter-connected laws to the same case; Systematically, when joining cases to general principles of law and finally the teleological method, allowed for a purpose interpretation of the law.

Discussion

Why did Scotland get a referendum and we don't?

Through the opportunistic eyes of the Catalanian government, the Scottish referendum was gesture of a true democratic and responsible nation. Westminster has done the right thing by allowing the Scots to decide upon their own future. A democratic solution, which politicians in Madrid should learn from and apply the same solution to the Catalanian struggle. The parallelism between the two is, in reality, remote; with vast historical, constitutional and procedural differences.

The decision to grant the Scottish nationalists a historic referendum was made with the agreement of the central government. David Cameron agreed with the leader of the Scottish National Party (SNP) David Salmond, on the terms of the referendum: Date, census and which question would be asked: "*should Scotland be an independent country*"?

Like it or not, David Cameron opened the Pandora's box of independence referendums and granted them a fair shot at independence. The result was extremely close (45 %-Yes/ 55 %-No) [4].

Spanish politicians refused, claiming the conditions in which the Scottish referendum took place cannot be imported for the Catalanian situation.

First of all, The United Kingdom is precisely that, a Union between Kingdoms in equal terms. Scotland adhered to the union in 1707, making its age old English enemy into its compatriot. Spain however is a single nation, of 2000 years in making.

The 300 year old union between the English and Scottish Kingdom was forged between equals. Catalonia has never been a kingdom, never been fully independent and especially has never fought against a Spanish kingdom as in the Scottish case.

Finally, the United Kingdom lacks the Carta Magna which forged the Spanish state. A Constitution which denies separatists movements from damaging national sovereignty.

Law point of view from the Spanish State

The Spanish constitution [5] states in its 2. Article, that "*National Sovereignty lies in the Spanish people, from which all powers originate from*".

It's possible to conceive therefore that a referendum on the separation of one region of the state into will affect all Spaniards and not just those who live in Catalonia.

Moreover, the 1978 constitution declares in its article 149.1.32^o: "*The State has exclusive competence over the following subjects...*

1) The authorization for public consultation via referendum".

A regional government can therefore not celebrate a referendum by its own accord without the approval of the state. Further approval is in fact needed as stated in article 93 on the elaboration of laws:

“Political decisions of significant importance can be submitted to popular consultation to all citizens...”

The referendum, proposed by the president prior approval of the parliament, must be authorized by the King”

Finally,

“The conditions of such consultation must be regulated by organic law”

This means that a majority of two thirds of the central parliament in Madrid must approve such conditions and pass the organic law that gives existence to the consultation via referendum.

If Catalonia were to become independent legally based on the current constitution, the matter must be discussed and approved by the central parliament in Madrid, the president must then suggest the consultation to the monarch, who must then finally authorize it. The Consultation, should then be subject to all Spaniards, as national sovereignty lies in the entire Spanish people.

It is therefore highly unlikely that the Catalan separatists, which have little power outside Catalonia, would manage to exert enough influence to convince two thirds of the central parliament to celebrate such a referendum.

Even if they did, such referendum would then be subjected to the entire Spanish people. A recent poll carried out by the Spanish diary *El Mundo* placed Spaniards in favor of an independent Catalonia in a measly 12 % [6].

Recent Constitutional history

In this situation of legal contention, many Catalan separatists have blamed the current Spanish constitution of 1978, stating that it does not allow regions to express themselves in a democratic way. The context of the approval of current constitution is the following:

After the Spanish civil war in 1939 Spain was to be ruled by the military dictatorship of Francisco Franco.

In 1978, after the Franco's death, a new constitution was written. It is important to know that the transition to democracy took place in an extremely delicate situation. The communist party was still illegal, and the Basque terrorist group, ETA, was at its most active. The approach toward the constitution was to try to appease all sides; in an effort to decentralize government structure, these Regional parliaments were giving more power, and the idea of a single Spanish nation was subdued to a plurinational one.

An interesting fact which perfectly describes the situation is the The Spanish national anthem. It is one of the few in the world that doesn't have lyrics. The music is the same from the previous during the Franco regime. After failing to agree to a set of lyrics claiming them to be “too nationalistic”, the anthem was left wordless, and continues so today.

The transition from Francisco Franco dictatorship to a modern democratic state was based on reconciliation of both sides, Hence the legalization of the Communist Party (to which the army was fiercely opposed).

The constitution was subjected to popular consultation via referendum, in which it was approved by 87,87 % of Spaniards. In the Catalan region, the participation was of 67 %. Those who did vote approved the constitution by 90,46 % with 4,97 % against and 4,05 blanks [7].

The constitution described the system of government a new democratic Spain would have; it's internal structure and composition as an Autonomic system in which Catalonia was considered an autonomy like all others.

The text also stated as explained previously the criteria for a referendum to take place. The Spanish entry in NATO was considered a delicate subject which polarized opinion. The central parliament, thought it convenient to subject such a significant measure, to public consultation via referendum. Spain is not therefore allergic to popular consultations, but those must be in accordance to law and in the utmost respect for national sovereignty which lies in all the Spanish people.

Taking all this into account, the Spaniards living in the Catalan region knew perfectly well the commitments and obligations the constitution would bring. It is also a young constitution, with it being passed less than forty years ago. Those who voted it are still alive today, there is no validity therefore that it is outdated; especially considering countries such as the United Kingdom or the USA which have had the same text for centuries.

Law point of view from the European Union

One of the main aspects discussed in the possibility of an independent Catalonia, is its future outcome in Europe. Spain entered the European Union in 1986, the common market, a

stronger currency and substantial investment and funds towards its modernization, has made Spain the 4th largest economy in Europe.

There are no euro-skeptics in Spain. A strong service sector and tourism dependent economy, with a vast market to which export its agriculture products, is undoubtedly in favor of European membership above everything else. Catalonia is no exception to the benefits of the European Union, the freedom of movement, allows Barcelona to become a major tourism destination in the old continent.

Conscious of the lifeline European membership means, those driving the separatist movement take great care in conveying that a future Catalanian Republic will stay in the EU and keep all its benefits. A unilaterally-declared Catalanian Republic, however, would face the near impossible feat of reentering the European club.

The road to Brussels is a long and tedious one. There are already seven countries on the waiting list [8]; Turkey, Kosovo, Serbia, Montenegro, Macedonia, Iceland and Bosnia are all in the process of negotiation: 35 chapters including Democracy, the rule of law and human rights. There is also a waiting period between applying for membership and the acceptance of a candidacy, which can take a year (Macedonia: Applied for full membership in March 2004 and was confirmed as candidate in December 2005) or twelve (Turkey was accepted as a candidate in 1999 after it applied in 1987).

On the other hand, those wishing to enter the euro zone will have to wait even longer, considering the vice-president of the commission, Valdis Dombrovskis, recently stated that the commission will not consider new members in the following years to allow the financial markets to stabilize after the 2008 crash [9].

Therefore even if everything else went to plan for the Catalanian separatists, it would take several years to see Catalonia in Europe once more; however, the greatest concern for the independence movement isn't when they will return to the EU, but if they will get back in at all.

European process of new membership

Stage 1

The process of new membership is set in article 49 of the European Union Treaty. First of all, the candidate must meet the *Copenhagen criteria* [10]: Geographical (be located in the European Continent), Political (Democracy, Rule of Law, Protection of minorities and human rights) Economic (Free Market and the guarantee that national producers can sustain the new competition) and Legislative (by which it gives up certain sovereignty with the aim to comply with new EU regulations).

Catalonia's major hurdle lies in the Political Criteria; In Spanish law it is unconstitutional to carry out a referendum on independence. The political leaders driving the separatist movement have often defended breaching Spanish law as a means of reaching independence. This behavior therefore breaches the rule-of-law criteria needed to enter the Union.

Stage 2

To enter the euro-club, each of the 28 member states must recognize Catalonia as a state. Regarding this dilemma Article 4, section 2 of the European Union Treaty [11], states: "*Only the State has competence to decide upon the structure of its politics and constitution.. The European Union will respect the essential functions of the state, especially those concerning its territorial integrity*".

Member states are therefore strongly encouraged to refuse recognition to an entity that lies under the jurisdiction of another Member State and has unilaterally declared itself independent. The Catalanian candidacy would be therefore rejected before reaching the negotiating table.

NATO

Another serious concern for a post unilaterally declared Catalonia would be its defense and security. The North Atlantic Treaty Organization has allowed Spain to spend a miserable amount (0,9 %) of its GDP on its defense budget without having to worry about its safety.

Leaving Spain, would mean abandoning the NATO safe haven, as the alliance recently stated that any entity which has separated itself from a member state, must reapply for entry as a third state.

This would be increasingly challenging seeing that major NATO state would not recognize the Catalanian Republic as a state.

Catalonia's safety would be at huge risk, seeing it would not have an army to defend itself or the immediate defense budget necessary to train one.

State recognition

Unable to force the central government into a referendum, those in favor of independence have previously defended right the for self-determination as a means of reaching statehood. This mechanism was designed for those ethnicities subject to colonial domination; it therefore requires a foreign power exerting pressure over a local minority with significant breaches of human rights. This does not happen in Spain, Catalonia is not subjected to a Spanish imperial pressure and the very idea of it is completely absurd. It is no surprise that the political leaders leading the separatist movement quickly abandoned this concept.

They then turned to a unilateral declaration of independence, a risky move, considering it may lead to international isolation. A state is a state as long as it seen as one. The Catalanian Republic would need major players on the international stage to recognize it as a fully independent and functional state, if it wishes to renegotiate itself into the international organizations they enjoyed when being in Spain.

Those major players will be extremely reluctant to recognize such an entity as a state; on the one hand due to the respect towards the Spanish State. To have a region unilaterally declare itself independent is embarrassing enough, but to have other nations recognize it would be a serious dent in Spain's reputation on the international stage to say the least.

On the other, and leaving diplomatic ties to Spain aside, no country would recognize an entity such as the Catalanian Republic as a state, for fear of similar movements occurring within their own borders. All states have richer and poorer regions, some of them with independency projects of their own. To have a region which has declared its own independence be reintegrated and accepted as an equal with relative ease, would reignite many separatists movements across the globe.

The method of addressing this issue has recently been the call of a federal-state-solution, such as that defended by Russia [12] in the Syrian conflict or by Canadian politicians for Scotland [13].

State recognition for the Catalanian Republic looks grim at best; with all states seeking to avoid similar movements at home, the vast majority will refuse and isolate a unilaterally declared independent Catalonia.

Results

As seen in the first chapter, the study concludes that the Scottish referendum held by Cameron's government cannot be applied in the Spanish case, the reasons being vast differences in the making of the United Kingdom with regard to the Spanish Unified State as. The Constitution of such Nation State states clearly that national sovereignty lies in all Spaniards, thus explaining the illegality of the referendum intended by the Catalanian separatists. The study concluded as well that the vast majority of Catalans approved the status quo not more than half a century ago.

On the other hand of the debate, the analysis once more debunked the pro independence narrative, which claimed the EU could never expel a state that has recently gained independence from a member. Further from the truth, the EU has explicitly stated the immediate cease of all EU policies for any successful independence movement. The outcome and alternative the Republic of Catalonia should endure was also studied, analyzing new EU membership policy and the bitter long time it would take Catalonians to re-enter Europe.

The same scenario applies for Catalonia's NATO membership, in which it would need to reapply like any other third state. The Study concludes with the consequences a unilaterally declared Republic would entail without recognition by third states

Conclusion

Taking into account that the current Spanish Constitution does not allow a referendum of such manner to take place; the only option the separatists have is to try to exert enough political pressure to write a new constitution, which would allow such consultations to take place. This seems unlikely as two thirds of the central government in Madrid would be needed, as well as the approval of the Spanish population.

On the other hand the separatists could take the suicide route of unilaterally declaration, such a policy would drive Catalonia into an abyss of uncertainty and international isolation.

Its exit from Spain would mean saying goodbye to all the benefits Spanish citizenship brings, mainly the access to financial markets, membership in the European Union and NATO.

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Каталонский сепаратизм и международное право

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Аннотация. Каталонская сепаратистское движение пытается представить себя как демократическое, стремящееся к свободе от тирании испанского государства. Оно призывает к политическому решению каталонской проблемы путем проведения референдума, на основании которого можно было бы создать свое собственное государство, независимое от остальной части Испании. Они используют политические приемы, которые извращают право ЕС, чтобы убедить избирателей Каталонии. Речь также идет об оптимистичных вид последствиях одностороннего заявления о независимости, что вновь созданная республика будет интегрирована в рамках международной системы с легкостью. Якобы, Европа, НАТО и ООН будут приветствовать независимую Каталонию после столетий испанского гнета. Эти призывы противоречат способу, которым сепаратисты пытаются организовать всенародное голосование. При этом игнорируются законы, за которые их представители сами голосовали в рамках испанской конституции.

Преимущества независимости Каталонии от Испании могут быть приняты как само собой разумеющееся, однако последствия отделения будут неоднозначными. Сейчас каждый испанец в каталонском регионе пользуется свободой передвижения. Имеются: огромный общий рынок; общая валюта; 28 государств, поддерживающие Испанию в военном отношении. Что останется после отделения?

Ключевые слова: Испания, Каталония, сепаратизм, независимость, НАТО, Европейский союз, международное право, референдум, признание.