



Amnesty and lawfare in the PSOE Junts agreement

Hay Derecho is concerned that the agreement signed by the PSOE and Junts on November 9th by which Junts agrees to vote for the appointment of Pedro Sánchez as President is detrimental for the preservation of the rule of law and the constitutional order in Spain, for the following reasons:

Firstly, it declares that its main objective is to overcome judicialisation through negotiation and political agreement. However, **at no point it acknowledges that the framework in which such negotiations must take place is the Spanish Constitution.** This is especially serious because the Constitutional Court is singled out as the source of the conflict for having preserved our Fundamental Rule in its ruling regarding the Catalan Statute, while Junts continues to claim the legitimacy of an illegal and unconstitutional secessionist process.

Secondly, an amnesty is agreed for acts linked to this process that were committed "before and after the consultation of 2014 and the referendum of 2017". In this context the conclusions of parliamentary investigation commissions on cases of "lawfare or judicialisation of politics" must be taken into account, which, moreover, may "give rise to actions of responsibility or legislative amendments". **Such statements imply that there is a politically motivated judicial persecution in Spain, which is untrue, and seek to place judicial action under the supervision of political bodies, which is unacceptable in a state governed by the rule of law.** So much so that the main [associations of judges](#) and [prosecutors](#) -both progressive and conservative- have condemned the attack this agreement represents on judicial independence (as have many other professional organisations). What is left of the Rule of Law if Parliament can approve laws which, for political reasons, ensure the legal immunity of the partners in government? Where is equality before the law when Parliament intends to approve a singular law which declares certain people legally immune because of their political motivation? Where is

judicial independence when it is said that the immunity of certain subjects must be preserved against the persecution of judges -"lawfare"- and parliamentary commissions are announced to supervise the activity of judges with the possibility of demanding accountability?

Thirdly, in the framework of a parliamentary democracy, **the response to fundamental questions for the territorial organisation of the State cannot be agreed in bilateral negotiation between political parties, but in Parliament.**

Fourthly, the referendum on self-determination that would be held "under Article 92 of the Constitution" is a constitutional oxymoron. The Spanish Constitutional Court has repeatedly decided that questions that affect the foundations of the constitutional order "can only be the object of popular consultation by means of a referendum on constitutional revision. It is a matter reserved in its institutional treatment to the procedure of article 168 CE" (STC 103/2008, of 11 September, FJ. 4, and SSTC 42/2014, of 25 March, FJ. 4; 31/2015, of 25 February, FJ. 6; 90/2017, of 5 July, FJ. 6; and 114/2017, of 17 October, FJ. 3).

Fifthly, the alternative proposed by the PSOE in favour of the "broad development, through the appropriate legal mechanisms, of the 2006 Statute" **implies a constitutional change through infra-constitutional rules**, and brings back the tensions raised by the statutory reforms of 2004-2011, which gave rise to various declarations of unconstitutionality (in particular, SSTC 247/2007, of 12 December, on the Statute of Autonomy of Valencia, and 31/2010, of 28 June, on the Statute of Autonomy of Catalonia).

Finally, **the agreement with Junts opens the door to a "singular dialogue" with Catalonia on financing that could allow tax privileges**, something that has been criticised by the Association of State Tax Inspectors. Furthermore, the stated desire to make further progress on Catalonia's cultural and linguistic singularities will shield the cultural-linguistic hegemony of Catalan nationalism, with the obvious **risk of discrimination against non catalan-speaking residents. We have to remind that a majority of Catalans vote for non nationalist parties.** Likewise, the establishment of bilateral cooperation mechanisms to the detriment of multilateral bodies is incompatible with the federal perfection of the territorial model envisaged by the Spanish Constitution.

For all these reasons, we oppose an agreement that could compromise essential principles of the democratic rule of law declared by our Constitution, and we recall that "respect for the law and the rights of others are the basis of political order and social peace" (art. 10.1.in fine of the Spanish Constitution).