



ISSN: 2036-5438

Spanish Autonomous Communities and EU policies

by

Agustín Ruíz Robledo*

Perspectives on Federalism, Vol. 5, issue 2, 2013





Abstract

The European Union affects not only the competences of the Governments and Parliaments, but also of all public authorities, in particular the powers of sub-state entities of compound states, who saw how decisions that their governments could not adopt domestically nevertheless ended up being adopted in Europe. This affected the competences of these sub-state entities, which had no representation in Europe – or, to put it shortly, no voice and no vote. Or rather, in the expressive German phrase: the European Community had long practised *Landesblindheit*.

This paper considers the evolving role of Spanish Autonomous Communities in shaping EU norms and policies. The presentation follows the classical model of distinguishing between the ascendant phase of European law and its descendant phase. Finally, it shall discuss the relationships that the Autonomous Communities have developed regarding the Union or any of its components and which can be grouped under the expressive name of “paradiplomacy” or inter-territorial cooperation.

Key-words

Spain, Autonomous Communities, regional parliaments, European affairs



1. Historical overview

The political and legal developments of the institutions created by the Treaty of Rome in 1957 quickly demonstrated that the European Economic Community was not an international organization in the classic sense, a structure of states which agree in principle on topics far removed from the citizens' everyday life, but instead it was something rather different, an organization with the capacity to adopt rules directly binding for all persons and public authorities of the Member States. It was to be a Community of States, “unprecedented in history, a new form of international organization that would eradicate borders” [Valverde, 2013: 86]. Inevitably this *supranational* organization affected not only the competences of the Governments and Parliaments, but also of all public authorities, in particular the powers of sub-state entities of compound states (which include Germany and Italy, two of the six founders), who saw how decisions that their governments could not adopt domestically nevertheless ended up being adopted in Europe. This affected the competences of these sub-state entities, which had no representation in Europe – or, to put it shortly, no voice and no vote. Or rather, in the expressive German phrase: the European Community had long practised *Landesblindheit*, a “*federal* (or autonomous) *blindness*”, [Ipsen, 1966].

Such *blindness* was, of course, something freely loved by the Community because the sub-state public authorities soon began to claim some type of participation in decision-making within the European Economic Community, controlled exclusively by State representatives. Even the European Parliamentary Assembly itself called for regional representation within the European Communities on 9 May 1960, the same year that the Council of Europe showed itself sensitive to regional demands and created the European Conference of Local Authorities. However, it took until 1988 for the creation of the Consultative Council of regional and local authorities attached to the Directorate General XVI of the Commission. And it was only in 1992 that the Maastricht Treaty recognized the Committee of the Regions and created the possibility that these regions could represent their States in the Council of Ministers (now the Council of the EU).



Obviously, by the mere fact that currently regions have found a gap in the Union, the States have not lost their predominant role in decision-making; indeed, some of the latest reforms have increased intergovernmental instruments, in prejudice to the strictly *communitarian* idea. Therefore, the States have not lost their role in the decision-making process of the Union, nor have they ceased to be the only ones who can reform the treaties: they remain the ‘masters of the treaties’, according to the well-known expression of the German Federal Constitutional Court in its judgment on the Treaty of Maastricht of 12 October 1993.

2. The European Union and the Autonomous Communities in Spanish constitutional law

The Spanish Constitution of 1978 made no express mention of the European Union until the much-debated reform of 27 September 2011 in which, finally, it looked at the constitutional text. Even now, there is still no solemn declaration of integration, but an indirect reference to the Union in that a statute admits that the Union sets the limits of public debt. It is worth noting that the silence of 1978 was no proof of lack of interest in Europe – on the contrary, all political parties and Spanish citizens themselves – and I think this remains true – are very supportive of European integration, completely endorsing the phrase pronounced at the beginning of the early twentieth century by the Spanish philosopher, José Ortega y Gasset: ‘Spain is the problem, Europe the solution.’ Therefore, all political parties agreed with the application for membership in the European Community presented by the Spanish Government in July 1977, immediately after the conclusion of the first democratic elections. That same Europeanism caused the members of the constituent assembly not to devote too much time to Europe, limiting themselves to approving Article 97 of the Constitution: which is an opening clause that allows sovereignty to be ceded without having to amend the Constitution.

If the Constitution was silent on both the participation of the Autonomous Communities in European institutions and on the way in which the Spanish will was to be constituted within the Union, the Statutes of Autonomy, all written before Spain was incorporated into Europe, equally say nothing explicitly. This *statutory silence* was broken



timidly only in 1996 by amending the Statute of the Canary Islands¹ and was exchanged for an enthusiastic *Europeanism* in the new Statute of Autonomy for Catalonia of 2006 and all that were inspired by it, including that of Valencia which paradoxically, the Parliament approved before that of Catalonia. These Statutes introduced the right of the respective Communities to participate in all proceedings established by the State to define the Spanish position in the framework of the European institutions when referring to autonomous competences.

It is clear that this statement must be nuanced by noting that participation shall be as it is defined by State law, by way of not interfering with the competences of the State, which is constitutionally competent and responsible for relations with the Union. The wording of the Catalan statute gave rise to the view that in that particular case it did invade the sphere of State competences, but the interpretation established by the Constitutional Court in its famous judgment 31/2010 of 28 June 2010 reined in its most contentious sections to a respectful *reading* of State competences in no less than six of the nine articles devoted to relations with the European Union [Pons, Campins, Castellà and Martín, 2012: 12-23]. In the following Statute of the series, the Andalusian, the tension between the will to regulate the relations between the Autonomous Community and the European Union and respect for State competences is clearly discernible. Thus the first Article reads, 'Framework for relationships: The relationship of the Autonomous Community of Andalusia with the institutions of the European Union shall be governed by the provisions of this Statute and within the framework of State legislation' (Art. 230).

I shall leave for another occasion the discussion as to whether this form of regulation *per saltum* with its continuous remissions to state law (explicit in the Valencian, the Andalusian and other Statutes, implicit in the Catalan) is a useful technique for a moderately rational functioning of the institutions or if what it does is create declarations of little legal value and much political friction, some of which invariably end up in the Constitutional Court^{II}. Here I consider it more useful for our collective goal that the authors focus on the actually existing mechanisms that enable the Communities to participate in European affairs so far as law and politics permit, subject of course to my referring to the statutory provisions where I specifically consider each of them.



Precisely because this is a work dealing with Spain and to avoid repetition, I shall not include the specific regional participatory mechanism established by the Union, the Committee of the Regions, which I had the opportunity of discussing in another work [Ruiz Robledo, 2005]. My presentation will follow the classical model of distinguishing between the ascendant phase of European law, which is none other than when the norms are written, and its descendant phase, i.e. its application by national legal operators. I shall exclude from the ascendant phase the study of ‘early warning’ with its unsatisfactory practice, as the specialized doctrine says [Alonso de Leon, 2011: 283-329], which is the subject of a specific work in this book. Finally, I shall discuss the relationships that the Autonomous Communities have developed regarding the Union or any of its components and which can be grouped under the expressive name of “paradiplomacy” or inter-territorial cooperation [Aldecoa and Keating, 2000].

3. Community participation in the ascendant phase of European law

3.1. The Conference on Issues Related to the European Union (CARUE)

Our analysis must begin with a general statement, agreed upon by all the Spanish doctrine: the Constitution has failed to design a coherent system of participation by the Communities in the formation of the State will, particularly obvious in the case of the Senate, the chamber of territorial representation under Article 69 of the Constitution, which constantly appears as a subject for reform by tyrants and Trojans but to date remains unchanged^{III}. Therefore, and for the role of the direction of the Executive authority in autonomous systems, since Spain joined what was then the European Community, it has sought a form of specific involvement for those executive authorities. Thus there emerged in 1988, as a forum for meeting without legislative backing, the Conference on Issues Related to the European Communities (CARCE). It was given statutory regulation by Law 2/1997. In April 2010, at a meeting held in Brussels with a certain solemnity, the Plenum of the CARCE decided that it should be called Conference on Issues Related to the European Union (CARUE) instead. Parliament has still not had sufficient time to bring Law 2/1997 up-to-date, so that it remains unchanged^{IV}. Let us take a rapid glance at the most important agreements adopted to allow the participation of Communities in the



Spanish Permanent Representation to the European Union (REPER) and the internal structure of the Union where States are represented.

3.2. The Ministry for Autonomous Affairs of REPER

Another major agreement between the State and the Communities within CARCE was reached on 22 July 1996 and was reflected in the Royal Decree 2105/1996 of 20 September, which created the Council of Autonomous Affairs in the Permanent Representation of Spain to the European Union (REPER), which in turn channels information from the European institutions to the Autonomous Communities and corresponds to the relationship with the Office of the Autonomous Communities in Brussels. The figure seemed to be inspired by the German model of *Beobachter der Länder*, or States Observer, although with substantial differences, since it was neither chosen by the Community nor was one of its functions to ensure autonomous interests, but rather was it appointed by the Government in order to transmit information to the Communities. Because the Communities wanted the German model and because the government changed from the PP to the socialist PSOE, CARCE adopted a resolution in December 2004 for the Communities freely to appoint two autonomous councillors, to be agreed upon in advance by the Communities within CARCE^V. In addition, this Agreement reinforced the position of these councillors to the point of permitting them to continue negotiating European issues of interest to the autonomies and to know, first-hand, about ‘critical points’ in the issues taking place in the European institutions. They were even assigned a coordinating role within REPER, which included organising briefings between autonomous representatives and sectoral councillors of REPER.

3.3. Autonomous participation in EU Council working groups

In the same agreement of 9 December 2004 on the reform of the Autonomous Council the participation of the Autonomous Communities in the EU Council’s preparatory working groups was agreed. Two methods provided for this:

- a) The ordinary way, by incorporating the autonomies in the Spanish delegation to the working groups of the Council for Autonomous Affairs of REPER when they affect autonomous competences, specifying in the same agreement that, at the least, these groups would relate to employment, social policy, health and



consumers, agriculture and fisheries, environment and education, and youth and culture. As a complementary channel, the agreement provides that the Ambassador may expand this participation to other groups.

- b) The special way, by designating technical representatives in these groups when autonomous representatives are going to participate in the Council.

In both cases, the incorporation also means joining COREPER and enables autonomous representatives to be involved in the meetings of the working groups under the rules set by the agreement itself.

3.4. The autonomous participation in the Council of the Union

The Council of the European Union, the great representative body of the States in the Union, is composed of representatives of the Member States with the competence to commit the will of that State. Now, since the Treaty of Maastricht, that representative need not necessarily be a minister of the central government but shall have that rank. In the words of the current text of the Treaty on European Union: ‘The Council shall consist of one representative of each Member State at ministerial level, authorized to commit the government of the Member State in question and to cast its vote’ (Art. 16.2).

As happens quite often in Europe, the change introduced in 1992 by the Maastricht Treaty was only a small step in the institutional life of the Union, but of great importance for the regions because it permitted various states (such as Germany, Austria, Belgium, and the United Kingdom) to have a regional representative on the Council. During the 1996-2004 period, the Popular Party government refused to let the regions participate in the Spanish delegation, which aroused the determined opposition of the Communities where PSOE and the nationalist parties enjoyed the majority. So when PSOE won the elections in March 2004, it hastened to open up the Council of Ministers to autonomous participation, while Jose Luis Rodriguez Zapatero included it in the government programme in his inauguration speech of 15 April 2004. And thus, at the same CARCE meeting of 9 December 9 2004 in which the reform of the Autonomous Councils and the participation in the Council’s working groups was approved, another quite reasonable agreement was



reached on the autonomous representation system in the Council's configurations. This materialized into a separate agreement, possibly for reasons of pure formal relevance, since the two agreements were published in the same resolution of the Ministry of Public Administration. The Agreement meticulously details the rules and principles for autonomous participation within the Spanish delegation, which even allows intervention in meetings of the Council, always provided that this happens with the permission of the head of the delegation (the Minister concerned). The Agreement relates in principle to four configurations (employment, social policy, health and consumers; agriculture and fisheries; environment; and education, youth and culture) although the Communities could only take part in issues where they were competent (eleven in total: employment, social issues, etc.). Later, in the CARUE meeting held on 2 July 2009, it was agreed to increase the autonomous participation to five configurations, and include Competition - consumer affairs. And on 7 February 2011, it was decided to expand autonomous participation to the configurations of the Council of Education, Youth, Culture and Sport with regard to issues of Sports.

The delicate question of how autonomous communities should choose their only representative, who must be a member of the Governing Council, was remitted to be agreed by each Sector Conference (ten are involved as specified by the agreement), which thus takes on a new leading role. In practice, these conferences have adopted a simple and objective criterion: rotation of representation every six months, while deciding on the order according to various criteria such as population, the order of creation of the Communities, alphabetical etc. In the final and exceptional instance when there was no agreement, a lottery was used. In any case, the agreements have resulted in a wide participation of autonomous governments in the Councils, as revealed by the reports published by the Government each year, always over a hundred pages^{VI}.

4. Community participation in the descendant phase of European law

During the first moments of the creation of the autonomous State, there was some political and doctrinal controversy as to who had the responsibility for applying international treaties in Spain, whether the state as signatory and international authority



responsible for them, or whether, on the contrary, the system of competences would be maintained and each area would be in charge of executing them, the State for treaties on matters within its competence and the Communities in theirs. The Constitutional Court seemed at first inclined to consider that the implementation of treaties was a competence with its own proper substance and was therefore a State competence, unless each statute reserved execution to the Community because some *obiter dicta* stated that ‘when the Statutes of Autonomy so provide, the implementation of international treaties and conventions on jurisdiction correspond to the autonomies, without prejudice to the State’s obligation to ensure compliance’.^{VII} However, when it thought more carefully about how to take the *ratio decidendi* it concluded the opposite: the treaty ‘is irrelevant in principle, - and without prejudice to the State’s international responsibility, - as a criterion of competence in one direction or another, it neither gives competence to the State under the rule of Article 149.1.3^a of the Constitution, nor does Article 27.3 of the Statute of Catalonia give it to the Autonomous Community, since, as is clear from the tenor of that Article, it applies whether the autonomous competence is under the material rules of competences included in its own Statute or not’ (STC 153/1989, 5 October, Case *granting Spanish nationality to co-produced films*, FJ 9).

This conclusion respecting the system of competences in applying international norms is maintained in its totality in the case of European norms, reinforced by European law itself that upholds the principle of institutional autonomy of States when applying their own laws. Therefore, the first matter the Constitutional Court had to analyse was whether European law and the system of competences allowed, as did the government, a literal interpretation of the European norm as an attribution of executive competence of State bodies, which the Constitutional Court did not accept: against the Government’s claim that several directives on animal health attributed competences since they referred to the ‘Central Authorities of each of the Member States’ and defined an ‘official veterinarian’ as ‘appointed by the central competent authority of the Member State’, the Constitutional Court ruled that ‘the only thing the directives impose at this point is that the central government is the sole interlocutor of the EEC in what concerns the effective implementation of Community determinations [...] but it cannot be understood as an expression of the attribution of competence by the EEC in favour of this or that sector of



the apparatus of the States belonging to it, but as a clarification of what are general or central bodies of those States, and ultimately responsible for implementing the European Community legislation and the obligation to notify the EEC and to accept the appointment of an official veterinarian to it'^{VIII}.

Exceptionally, the Constitutional Court has recognized that the State can intervene in the application of European law affecting autonomous competences in the event that the European norm requires a decision prior to the implementation by all Autonomous Communities, where the typical situation is when Spain receives a global subsidy that subsequently has to be distributed between the Autonomous Communities; in that case, even the State can centrally manage funds whenever they 'are essential to ensure the full effectiveness of aid within the basic organization of the sector and to ensure equal access to procurement and enjoyment of potential recipients' (STC 79/1992, of 28 May, Case *Cattle Subsidies*, FJ2).

Now, although an external norm – whether by treaty or European regulation – does not alter the internal system of distribution of powers, it cannot be ignored that the international responsibility for complying with Treaties lies exclusively with States, according to Article 27 of the Vienna Convention on the Law of Treaties. And the same holds true in the case of European law, where the Court has rejected that a State can avoid its responsibility vis-à-vis the Union by alleging that the breach of a European norm was committed by an autonomous sub-state^{IX}. In anticipation of that responsibility, Article 93 of the Spanish Constitution establishes that the Parliament or the Government, as the case may be, has to ensure compliance with treaties to which constitutional competences are transferred, 'and of the resolutions issued by international or supranational organisms, holders of the assignment'. The doctrine studied this Article in depth and today there is general agreement that Article 93 does not give the State a new control mechanism over the Autonomous Communities; it is not a separate title. Instead, the guarantee of compliance with European law must be ensured by ordinary instruments under the Constitution, as indeed the Constitutional Court itself has upheld, in its Judgment 80/1993 of 8 March, in the *Expedición de documentos con validez en Europa* case: "although Article 93 sets out a clear manifestation of the monopoly of the State in order to guarantee the fulfillment of the commitments given to other subjects of international law, [...] this does



not mean that the provision of Article 93 by itself gives a title of autonomous competence to the State”.

That maintenance of the system of competences and the ultimate guarantee of the State to comply with European legislation implies, as the Constitutional Court has consistently held, that the central State organs have the capacity to collect all the data and information necessary for such compliance (STC 80/1993, 8 March, *Expedición de documentos con validez en Europa*) as well as, if necessary, to activate the legal controls if they consider that an Autonomous Community is applying supra-state law incorrectly. For the Constitutional Court, the substitution clause of Article 149.3 of the Constitution can enable the State to guarantee the effective implementation of European law and prevent that the relationship with the Union is ‘at the mercy of the legal activity or passivity of each and every one of the Autonomous Communities with competence in this area’^X. Fortunately, the Constitutional Court has not had an occasion to rule on an exceptional instrument that some authors, amongst which I include myself, have considered could be used in extreme cases of repeated non-compliance, fully aware of European legislation and the judgments of the Court of Justice: there is even the possibility that the courts dictate a harmonization law and use state coercion under Article 155 of the Constitution. In any event, in ordinary legislation various state norms have expressly established that if ‘the Kingdom of Spain’ was sanctioned by the European institutions for breach of any European norm, the responsible Autonomous Community shall assume its cost ‘for the part attributable to it’^{XI}.

If the treaties and European law should not substantially alter the distribution system of competences, this is equally true when analyzing the distribution of functions within the Autonomous Communities, so that when the application of a treaty or a European norm on competences requiring an Autonomous Community law, the respective Parliament will have to approve it and the respective Government will be responsible for enforcement action if needed. However, in practice there is what we might call a certain *temptation* for autonomous governments to develop these norms themselves, claiming that it is sufficient to use regulations. And when regulations with the force of law are clearly needed, then in almost all communities in which these legislative decrees are allowed, they have been used with some frequency to bring the autonomous law in line with the European. Since 2006,



some autonomous governments have had the power to issue decree-laws that have been used for the same purpose of implementing European legislation^{XII}.

5. Activities of the European external action in connection with the European Union: Autonomous para-diplomacy

5.1. Diplomatic relations within Spain

As soon as the autonomous communities were constituted, they began to display a characteristic interest in making contacts with foreign authorities, both inside and outside Spain, no doubt as a way to symbolically mark their nature as political institutions. As a way to regulate these contacts, albeit indirectly, the Technical Secretariat-General of the Ministry of Foreign Affairs sent a Circular, 31 October 31 1983, to the Delegates of the Government of the autonomous authorities on visits and foreign contacts. Today, communities routinely maintain in their territories diplomatic relations with foreign ambassadors accredited in Spain, including representatives of the European Union and delegations of the most varied European agencies visiting our country.

5.2. Foreign visits

With the same normality with which the autonomous authorities receive foreign representatives, autonomous representatives travel outside Spain. From frequent trips to Brussels to visits to China and Japan, it is possible to trace a long series of official visits by both members of the Governments and Parliaments for the most diverse reasons: cultural and commercial promotions, study and exchange tours, cooperation, development, etc. Sometimes the purpose of travel, or the number of travellers, is such that the newspapers criticize what most people think of as ‘institutional tourism’ rather than a journey useful for the Community’s general interests. The central government in 1989 sought to regulate and coordinate these visits, but after a first round of consultations with the Presidents of the Communities, the attempt proved ineffective. Thus, the only rules on the matter, if the never officially published Circulars of 31 October 1983 and 13 March 1984 can be termed such, have been sent to embassies and consulates abroad. To enjoy the help of this service outside the State, the Communities must notify the Technical Secretary General of Ministry of Foreign Affairs about their journey, specifying departure and return dates, length of stay,



and identifying people who will go and the reason for the visit [Conde Martínez, 2000: 151-155].

Sometimes these visits have caused more than one confrontation between the central and autonomous governments, typically nationalist governments. Although the recent government strategy of the PP is to not delve into ‘political considerations’ and not to comment on controversial visits, such as those that the President of the Catalan Government made in recent times to explain his strategy for independence. Of course, the failure of the Catalan President to achieve his aim of interviewing major European leaders suggests behind-the-scenes activities by the Spanish Government. There has also been some confrontation with Communities governed by a national party of different political viewpoint than the central government. Thus in the years of the second Aznar (PP) Government (2000-2004) and while the European Union was negotiating a treaty on fishing with Morocco, there were some visits by the President of Andalusia’s government to Morocco that were branded as institutional disloyalty by the Government^{xiii}.

5.3. Permanent external representation

After institutional visits abroad, the next logical step in the creation of permanent external action is the opening of official representations, which at first were made under the formula of companies and foundations governed by private law, until the Basque Autonomous Community created a Representative Office in Brussels. The Constitutional Court considered it compatible with the Constitution in its Judgment of 165/1994 of 26 May since the norm creating it did not ascribe any international status or assume state functions. Under this doctrine, virtually all Communities have opened an office in Brussels. For example, Decree 164/1995 of 27 June created the Delegation of the Government of Andalusia in Brussels, which has the mission of dissemination, promotion and ‘institutional representation of Andalusia’.

The State acknowledged this situation and Law 6/1997 of 14 April on the Organization and Functioning of the General State Administration stipulated, in Article 36.7, that ‘In carrying out the tasks entrusted to it and taking into account the objectives and foreign policy interests of Spain, the General Administration of the State shall collaborate with all



Spanish institutions and bodies acting abroad and especially with the offices of the Autonomous Communities.’

Meanwhile, seven of the eight Autonomous Statutes (all but Navarre) passed since 2006 have expressly included autonomous delegations in Brussels, and the Valencian and Catalan Statutes enable their respective Governments to open offices in any other State in order to promote the interests of their communities. Moreover, these provisions were not alleged to be unconstitutional in the broad appeal against the Catalan Statute submitted by the PP, in which it appealed against the vast majority of the articles on the external action of the Catalan Government. Equally forthright is the Andalusian Statute’s Article 236: ‘The Andalusian government shall maintain a permanent delegation in the European Union as the administrative body to represent, defend and promote its interests within the institutions and bodies of the same, and to gather information and establish relationships and coordination mechanisms therewith’.

5.4. Cooperation among the European sub-state entities

If after World War II the idea of cooperation among States spread across Europe, the idea of cooperation among sub-state entities did not lag far behind. In part this was because of a general desire for cooperation and also, in part, so that the voices of the regions could be heard and to avoid European integration being a monopoly of the central organs of the States, however much they remain the main actors in this process. In this defense of regional interests in Europe, the first associations that emerged were associations either of industry, due to their purpose (for example, the Interregional Commission for Transport in the Mediterranean Basin or the Assembly of European Wine-Producing Regions, AREV) or their composition, such as Association of European Border Regions (AFBR), founded in 1971 and with enough weight to make the Union develop, in the 1990s, the regional Interreg cooperation programme in the sense advocated by the AFBR. Similarly, the Conference of Peripheral Maritime Regions of Europe (CPMR), founded in 1973, which includes 127 regions across Europe with the aim of achieving a ‘more balanced development of the European Union’ and which promotes studies on EU policies with a strong territorial impact, encourages cooperation agreements



(partnership), collaboration with the European Commission in inter-regional cooperation programs, etc.

In 1985, the great European organisation of the regionalist movement was founded, the Assembly of European Regions. The AER was created by 47 regions and a good number of regional organisations in order to defend regional interests in Europe and certainly the establishment of the Committee of the Regions (CoR) in Maastricht is due in great measure to the work of the AER. In fact, the CoR can be considered a qualified variant of this membership of inter-territorial cooperation bodies, although the nature of the European institution makes it best suited for study as one of the techniques of participation in European Union decisions. Indeed, we should stop, even if just for a moment, to look into two informal associated movements whose leaders were certain sub-state entities and in which the Spanish drive has been essential: the Conference of European Regions with Legislative Powers (REGLEG) and the Conference of European Regions Legislative Assemblies (CALRE). If the accounts of REGLEG are accurate, in the Union there are no less than 74 autonomous Communities with legislative powers, belonging to eight States and including more than 200 million inhabitants, i.e. 43% of the 500 million European Union citizens^{XIV}.

While REGLEG is made up of the regional presidents, CALRE consists of the Presidents of Regional Parliaments. It is worth noting that CALRE chronologically precedes REGLEG because while this latter was established in 2000 to defend the interests of these regions, CALRE was founded in 1997 in Oviedo at the initiative of the Parliament of Asturias [Arce Janariz, 2005:1]. The claims of both organisations are quite similar and include the overall goal of gaining a special status for these regions and, as specific achievements, they have won some representation in the Council, a greater role for regional parliaments in Europe, and locus standi before the Court of Justice to preserve their competences.

If the new statutes became a legal remedy to fulfil autonomous aspirations to participate in the Union's institutions which has inevitably led – as we have seen – to continuous remissions to State law to avoid encroaching on State competences, the same



has not occurred when Communities relate to other sub-state entities exercising their own powers. Thus, for example, the Catalan Statute mandates that the ‘The Catalan Government shall promote cooperation with the European Regions with which it shares economic, social, environmental and cultural rights and shall establish appropriate relationships’ (Art. 197).

In any event, if only briefly, it is necessary to remember that the Communities may participate in the Outline Convention on Trans-Frontier Cooperation made between territorial authorities and Communities on 21 May 21 1980, signed in Madrid and produced within the framework of the Council of Europe, which paradoxically was not ratified by Spain until 1990 and, moreover, even then with a statement that conditioned the validity of the signature of the instruments of cooperation among local authorities upon the conclusion of a bilateral treaty between Spain and the State to which the foreign communities belonged. Five years later, in 1995, the first bilateral treaty applying the Framework Convention was signed: the Spanish-French trans-frontier cooperation signed at Bayonne on 10 March 1995. The relevant treaty with Portugal, which grants those Autonomous Communities bordering Portugal a much wider room for action than the previous regime requiring the express consent of the State, was not signed until 2002. Based on this, in 2010 the *Treaty of Valencia* created the Euroregion of Alentejo-Algarve-Andalusia, whose main purpose is to promote collaboration for the development of those territories and especially to ‘prepare joint projects, programmes and proposals eligible for Community co-financing’ (Art. 3 of the Cooperation Agreement).

6. Short final reflection

Denis de Rougemont was the foremost theorist of autonomy as a form of European integration. However, in his thinking autonomous communities were not mini-states, but intermediate entities the strong collaboration between which would blur the boundaries, as evidenced by the Regio Basiliensis founded in 1963 as a private law Association not far from Geneva, where the great Swiss federalist founded the *Institut universitaire d'études européennes*^{XV}. Therefore, the ‘Europe of the Regions’, which Rougemont advocated, was not intended – as it is sometimes said out of a political desire to disqualify rather to make



clearer – to replace the 25 states by 250 autonomous Communities, but rather that these should play a role in a process that affects all public authorities. To put it graphically, and perhaps inaccurately, it tries to prevent the traditional ‘federal blindness’ of European institutions from increasing to such an extent that regions in Europe would be crushed by a new ventriloquist centralism: the great European voices, the Council of Ministers and the European Council, that are not so much truly European voices as an association of States.

This objective can be accomplished by various means. The first is what we might call the scope of Union policies that do not always have to come from the State, but which in some areas must descend to the regional level, especially as regards economic development, something already recognised in the Treaty of Rome, whose Preamble declares that the signatory States are concerned to ‘strengthen the unity of their economies and to ensure their harmonious development by reducing the differences between the various regions and the backwardness of the least favored’. Here originated the important source of the European Regional Development Fund, which has so greatly benefited most Spanish and Italian regions.

The second measure to achieve a Europe of the Regions is the direct cooperation among sub-state entities, creating Euroregions that develop their own solidarities and self-interests, leading to common projects for the benefit of all their inhabitants. At present, there are more than 60 such regions, although many of them are far from being such ambitious projects like Basel Airport, shared by Switzerland, Germany and France, the great example we must bear in mind when thinking about cross-border collaboration.

The third means is an institutional reform of the European Union. However, in my personal opinion, this reform cannot be done by complicating the decision-making system to the point of causing its paralysis, as would happen if the opinions of the Committee of the Regions were accepted as binding. The aim of autonomy is to enhance European integration, not to slow down its decision-making system. Therefore, the solution to the European Union’s democratic deficit cannot come from *an intergovernmentalism* in which autonomous Communities become new actors in the legislative procedure, but only through the gradual replacement of these intergovernmental institutions by others that are



more genuinely European, with their own autonomous legitimacy, such as the European Parliament. It is no coincidence that this Parliament and the European Commission – the two most *European* institutions of the Union – have always shown a regional sensitivity that has gone far beyond that held by State representatives, the Council and the European Council.

* Professor of Constitutional Law, University of Granada.

^I The new Article 37.2 of the EACAN (the Canary Islands Autonomous Statute) was a precedent for a technique that would become habitual from 2006 onwards in the articles on Europe in the Autonomous Statutes. It was politically an important declaration, but almost devoid of legal content: ‘The Government of the Canary Islands may participate in Spanish delegations to European Community organs when dealing with matters of specific interest to the Canary Islands, in accordance with what is stipulated in State legislation in the matter’.

^{II} For all the doctrine that has studied the new statutory regulation on Europe see Rodríguez-Vergara Díaz 2007. My own opinion is in Ruiz Robledo 2005b.

^{III} In February 2006, the Council of State issued, at the request of Zapatero’s government, a documented report on the reform of the Constitution in which it proposed, among other questions, that the Senate’s position in the autonomous State should be reinforced, both in passing laws that affected the autonomies (for example the delegation laws of Art. 150 of the Constitution would initiate their transmission in the Senate); and in its role as meeting point and for territorial cooperation, especially with the drafting of Community law and its development, application and execution. This valuable report was never applied since the government, preoccupied by other more urgent matters, quickly forgot about it. See Rubio Llorente 2006.

^{IV} As our politicians give no importance to formal details, the Conference has come to be called CARUE in all official documents. Doubtless, with the great number of serious problems that harass Spain the government thought that there was no time to change a Law simply to alter the name of a secondary institution. Moreover, the other parties have not had the idea of taking advantage of the occasion to *update* that Law 2/1997 on more weighty matters, since it will soon have been on the statute book for twenty years.

^V Agreement of 9 December 2004 signed by all the Autonomous Communities, which inevitably demanded some ‘special rules’ to save bilateral cases, especially insisted upon by the Basque Country, Canary Isles, and Navarre. Unlike the two previous ones and another of 30 November 1994 that has not been explained here as it is of little importance, the 2004 CARCE agreement was conveniently published by the Ministry of Public Administration in its Resolution of 28 February 2005 (BOE n°. 64, 16 March 2005).

^{VI} *Los Informes anuales sobre la participación de las Comunidades Autónomas en el Consejo de la Unión Europea* can be consulted at

http://www.seap.minhap.gob.es/es/areas/politica_autonomica/coop_multilateral_ccaa_ue/ccaa_y_ue/Participacion_CCAA_Consejo_Ministros/informe_consejo_ministros_ue.html.

In the last one published up to the present, of 2011, the different procedures adopted by the Sectorial Conferences to choose the autonomous representative in their respective configurations of the Council are detailed (pp. 3-11).

^{VII} STC 227/1988, 29 November, Case *Ley de Aguas*, FJ 21 a. It is also true that in another *obiter dicta* the Court had indicated that Art. 27.3 of EAC imposed on the Generalidad an “obligation, not a competence” (STC 58/1982, 27 July, Case *Ley de Patrimonio de la Generalidad de Cataluña*, FJ 4) but the context of the expression is rather restrictive of autonomous competences, just the opposite in meaning to STC 153/1989.

^{VIII} STC 252/1988, 20 December, Case *Comercio de carnes*, FFJJ 2 and 4. In STC 172/1992, 29 October, Case *Ley catalana de residuos industriales*, specified the consequences of the idea that the State is the ‘only interlocutor’: the Constitutional Court admitted the constitutionality of the Catalan norm that established the obligation of the *Generalidad* to report on the management of toxic wastes to the European Commission ‘through the competent conducts’, as soon as nothing prevented those conducts being interpreted by the State ‘to whom corresponded not only the direct relation with the Commission, but also to join the various reports that it receives from other autonomous bodies to enable the Commission to treat as a whole and not separately the information it had requested’ (FJ 3). I have analysed this first case law considered by the Constitutional Court in more detail in Ruiz Robledo 1998.



^{IX} The leading case in which the Court fixed this principle is by its Judgment of 11 July 1984, *Commission v. Italia* (130/1983, Rec. p. 2849), which condemned Italy for a breach of a Decision of the Commission which held that certain agricultural subsidies given to the region of Sicily were incompatible with European law, since it did not admit the exception formulated by the Italian government, according to which it had asked Sicily on several occasions to repeal the norms to which the Commission's Decision referred.

^X STC 79/1992, 28 May, Case *Ayudas al ganado vacuno*, FJ 3. I had occasion to be concerned with the earlier doctrinal controversy over the use of the substitution clause as a guarantee to fulfilling European law and to opt for the posture that, as I subsequently saw with satisfaction, was then chosen by the Constitutional Court. See Ruiz Robledo 1991. Hence I also defended the State's exceptional possibility of using the mechanisms of Art. 155, to which I shall refer next.

^{XI} For example, in 2003 Parliament amended the *Ley de Aguas* of 1991 by introducing a new Article 121 b: 'Community Responsibility. The competent public authorities in each river basin, which fail to meet the environmental objectives set by the water planning and the duty to report on these issues, leading to the Kingdom of Spain being sanctioned by the European institutions, shall accept that part of the liability attributable to such breach. In the process of attributing liability the State may offset the amount determined from the financial transfers that the government of the Autonomous Community receives. In similar terms are: *Leyes* 17/2009, 23 November, sobre el libre acceso a las actividades de servicios, 1/2010, 1 March, de reforma de la *Ley* 7/1996, 15 January, de Ordenación del Comercio Minorista; and 41/2010, 29 December, de protección del medio marino. In general terms, see the Second Additional Provision of the Organic Law of 2/2012, 27 April, on Budgetary Stability and Financial sustainability.

^{XII} See for example, the Catalan Decree-law 1/2009, 22 December, de ordenación de los equipamientos comerciales and the Andalusian Decree-Law 3/2009, 22 December, amending several laws to transpose into Andalusia Directive 2006/123/EC, 12 December 2006, of the European Parliament and the Council, relating to services in the single market. As an example of legislative Decrees, see the pioneering Catalan legislative decrees 1/1986, 4 August, amending *Ley* 13/1982, de Colegios Profesionales, to adapt it to Community norms; and 2/1986, to modify *Ley* 6/1983, sobre residuos industriales, to adapt it to Community norms.

^{XIII} The media reports about some of these confrontations between central government and the Andalusian government can be found in the conservative newspaper ABC http://www.abcdesevilla.es/hemeroteca/historico-04-02-2003/sevilla/Andalucia/manuel-chaves-viajara-a-marruecos-para-firmar-un-acuerdo-antes-de-las-municipales-del-25-m_146159.html and a rather different vision in EL PAÍS: http://elpais.com/diario/2003/03/17/andalucia/1047856930_850215.html. In scientific doctrine, see Tuñón 2010: 197 ff.

^{XIV} I retrieved the data from http://www.regleg.eu/index.php?option=com_content&view=category&layout=blog&id=4&Itemid=5.

^{XV} His concern to make it clear that the regions were not mini-states led him to write an article with that title: Rougemont 1970.

References

- Aldecoa Francisco and Keating Michael (eds), 2000, *Paradiplomacia: las relaciones internacionales de las regiones*, Marcial Pons, Madrid.
- Alonso de León Sergio, 2011, 'Análisis crítico del papel de los parlamentos regionales en el control del principio de subsidiariedad en la Unión Europea', in *Revista de Derecho Constitucional Europeo*, no. 16: 283-329.
- Arce Janáriz Alberto, 2005, 'La Conferencia de Asambleas Legislativas de las Regiones de Europa (CALRE) como ejemplo de colaboración interparlamentaria', Speech given at Fundación Giménez Abad, 2005, available at http://www.fundacionmgimenezabad.es/images/Documentos/2005/20050527_epp_arce_janariz_a_es_o.p.df.
- Biglino Paloma (coord), 2003, *La política europea de las Comunidades Autónomas y su control parlamentario*, Tirant lo Blanch, Valencia.
- Biglino Paloma and Delgado del Rincón Luis Estaban (coords), 2011, *El incumplimiento del derecho comunitario en el estado autonómico*, Centro de Estudios Políticos y Constitucionales, Madrid.



- Bustos Gisbert Rafael, 1996, *Relaciones Internacionales y Comunidades Autónomas*, Centro de Estudios Constitucionales, Madrid.
- Carmona Contreras Ana M., 2009, 'La organización territorial de los Estados en el Tratado de Lisboa: ¿Nada nuevo bajo el sol?', in *Teoría y Realidad Constitucional*, no. 23: 237-256.
- Casadevanta Romaní Carlos de, 2001, *La acción exterior de las Comunidades Autónomas. Balance de una práctica consolidada*, Dilex, Madrid.
- Castellà Andreu Josep Maria, 2008, 'Las Comunidades Autónomas en Bruselas: la dimensión externa de la participación autonómica en la Unión Europea', in *Revista d'estudis autonòmics i federals*, no. 6: 37-91.
- Conde Martínez Carlos, 2000, *La acción exterior de las Comunidades Autónomas*, Tecnos, Madrid.
- D'Atena Antonio (ed), 2008, *Regionalismo e sovranazionalità*, Giuffrè, Milano.
- González Pascual María Isabel, 2009, '¿Deben continuar los Länder negociando en el Consejo de la UE? De la Landesblindheit a la Europafähigkeit en el marco de la reforma federal de 2006', in *Civitas. Revista española de Derecho Europeo*, no. 29: 49-97.
- González Pascual María Isabel, 2012, 'La presencia de las Comunidades Autónomas en la Unión Europea tras las reformas estatutarias', in *El Cronista del Estado Social y Democrático de Derecho*, no. 26: 20-29.
- Grützmache Christoph, 2013, *Die europäische Union und der deutsche Föderalismus: Möglichkeiten und Grenzen der politischen Einflussnahme der Bundesländer am Beispiel Mecklenburg-Vorpommerns*, Diplomica Verlag GmbH, Hamburg.
- Ipsen Hans-Peter, 1966, 'Als Bundesstaat in der Gemeinschaft', in Caemmerer Ernst von, Schlochauer Hans-Jürgen and Steindorff Ernst (eds), *Probleme des Europäischen Recht. Festschrift für Walter Hallstein zu seinem 65. Geburtstag*, Klostermann, Frankfurt, 248-256.
- Jauregi Gurutz, 2005, 'La participación de las Comunidades Autónomas en la Unión Europea', in *Revista Catalana de Derecho Público*, no. 31: 137-170.
- Lachapelle Guy and Paquine Stéphane (eds), 2005, *Mastering Globalization. New Sub-States' Governance and Strategies*, Routledge, London.
- Linde Paniagua Enrique, 2004, 'Los parlamentos nacionales y regionales, y su implicación en la toma de decisiones en la Unión Europea', in *Revista de Derecho de la Unión Europea*, no. 6: 161-182.
- López Castillo Antonio, 1996, *Constitución e integración*, Centro de Estudios Constitucionales, Madrid.
- Montilla Martos José Antonio, 2005, *Derecho de la Unión Europea y Comunidades Autónomas*, Centro de Estudios Políticos y Constitucionales, Madrid.
- Morata Francesc (ed), 2004, *Gobernanza multinivel en la Unión Europa*, Tirant lo Blanch, Valencia.
- Navarro Méndez José Ignacio, 2003, *La acción exterior de la Comunidad Autónoma de Canarias. Marco teórico y praxis*, Tirant lo Blanch, Valencia.
- Odone Cecilia, 2013, 'La collaborazione in fase ascendente tra il parlamento e le assemblee legislative regionali: Cinque casi pratici ed alcune riflessioni', in *federalismi.it*, XI(7).
- Ordóñez Solís David, 2007, 'Las relaciones entre la Unión Europea y las Comunidades Autónomas en los nuevos Estatutos', in *Revista d'Estudis Autonòmics i Federals*, no. 4: 69-128.
- Pérez Calvo Alberto, 1993, *Estado autonómico y Comunidad Europea*, Tecnos, Madrid.
- Pérez Tremps, Pablo (coord), Cabellos Espíerrez Miguel Ángel and Roig Molés Eduard, 1998, *La participación europea y la acción exterior de las Comunidades Autónomas*, Marcial Pons, Madrid.
- Pons Xavier, Mar Campins Mar, Castellà Josep M^a. and Martín Esther, 2012, *La acción exterior y europea de la Generalitat de Cataluña. Desarrollo normativo e institucional*, Marcial Pons, Madrid.
- Rodríguez-Vergara Díaz Ángel, 2007, 'Las Regiones en la Unión Europea tras los nuevos Estatutos de Autonomía', in *Revista de Derecho de la Unión Europea*, no. 13: 247-254.
- Roig Molés Eduard, 2002, *Las Comunidades Autónomas y la posición española en asuntos europeos*, Tirant lo blanch, Valencia.
- Rougemont Denis de, 1970, 'La région n'est pas un mini-État-Nation', in *Bulletin du Centre européen de la Culture*, no. 5-6: 31-40.
- Rubio Llorente Francisco, 1995, 'Las Comunidades Autónomas y la Comunidad Europea', in *Autonomías*, no. 20: 91-102.
- Rubio Llorente Francisco (ed), 2006, *El informe del Consejo de Estado sobre la reforma constitucional: texto del informe y debates académicos*, Centro de Estudios Políticos y Constitucionales, Madrid.



-
- Ruiz Robledo Agustín, 1991, 'Relaciones internacionales y Comunidades Autónomas', in *LA LEY. Revista jurídica española de doctrina jurisprudencia y bibliografía*, ... (1): 1160-1168.
 - Ruiz Robledo Agustín, 1998, 'Las implicaciones constitucionales de la participación de España en el proceso de integración europeo', in *Revista Jurídica de Asturias*, no. 22: 93-110.
 - Ruiz Robledo Agustín, 2005a, 'El Comité de las Regiones', in Bru Purón Carlos María (dir), *Exégesis conjunta de los tratados vigentes y constitucional europeos*, Aranzadi-Civitas, Madrid, 2092-2104.
 - Ruiz Robledo Agustín, 2005b, 'La colaboración entre la Comunidad Autónoma de Andalucía y el Estado en asuntos con proyección internacional', in Terol Becerra Manuel (coord), *Las relaciones de Andalucía con el Estado y otras Comunidades Autónomas*, Comares, Granada, 159-196.
 - Ruiz Robledo Agustín, 2008, 'La actividad exterior de las Comunidades Autónomas en el segundo Estado autonómico', in *Revista de Derecho Político*, no. 71-72: 481-513.
 - Tuñón Jorge, 2010, *Andalucía y la Unión Europea: actor periférico y escenario privilegiado de la política europea*, Centro de Estudios Andaluces, Sevilla.
 - Valero Jordana Gregorio, 2003, *Parlamento y regiones en la construcción de Europa*, Tecniso, Madrid.
 - Valverde José Luis, 2012, *Europa. Pensamiento y acción, 1945-2012*, published by the author, Granada.