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The direct rule in the Comparative Law: the suspension of Northern Ireland Assembly and the Catalanian Autonomy

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TABLE OF CONTENTS

I.- INTRODUCTION	2
II.- THE DIRECT RULE	3
1.- Definition	3
2.- The Direct Rule in Comparative Law	4
2.1.- Italy	4
2.2.- Austria	5
2.3.- Switzerland	7
2.4.- Germany	8
2.5.- United Kingdom	12
2.6.- Spain	14
III.- ENFORCEMENT OF THE DIRECT RULE	17
1.- The suspension of the Northern Ireland Assembly: the direct rule from Westminster	17
1.1.- Territorial allocation of power in the United Kingdom: the devolution agreements	17
1.2.- The direct rule origins: the Northern Ireland (Temporary Provisions) Act 1972	18
1.3.- The Good Friday Agreement and the Northern Ireland Act 2000	20
1.4.- The suspension of the Northern Ireland Assembly (2002-2007)	22
1.5.- Northern Ireland (St. Andrew's Agreement) Act 2006	22
2.- The launching of article 155 of the Spanish Constitution for Catalonia	23
IV.- CONCLUSION	29
V.- BIBLIOGRAPHY	32

I. - INTRODUCTION

As part of the Catalan Self-Determination Referendum Law, the *Generalitat* of Catalonia convened a self-determination referendum that was held illegal on 1st October 2017. As a result, the President of the *Generalitat* of Catalonia, Carles Puigdemont, proclaimed and, at the same time, suspended the Catalan Republic in a declaration delivered on 10th October in the Parliament of Catalonia.

The next day, the Spanish Government, under the presidency of Mariano Rajoy, asked the President of the *Generalitat* to clarify whether that declaration was a unilateral declaration of independence, and after not responding clearly, the Cabinet agreed on a set of measures to intervene Catalonia under the application of article 155 of the Spanish Constitution. Those measures were approved by the Senate on 27th October, while at the same time the Catalan Parliament proclaimed the Catalan Republic. That same night, Mariano Rajoy decided to remove the Government of the *Generalitat* and dissolved the Parliament of Catalonia and called Catalan regional elections on 21st December.

These events were the inspiration to investigate the background of article 155 of the Spanish Constitution, taking into account that the Spanish Constitution is directly inspired by other European Constitutions, such as the German Basic Law (*Grundgesetz*) or the Italian Constitution. Accordingly, it seemed interesting to know how the direct rule, or other similar federal control institutions, are regulated by other Constitutions, as well as in what cases it had been applied. This investigation led to the discovery of what happened up to thirty times in Northern Ireland since 1972 and before the devolution agreements with the direct rule.

Throughout this paper we will deal with a current issue in our legal-political panorama, the direct rule, but which also enjoys a long legal tradition in the legal systems of the non-centralised States. We will divide the work in two parts, at the beginning we will address the regulation of the direct rule and other similar institutions in other legal European systems from which inspiration has been taken for our well-known article 155, such as Italy, Austria, Switzerland and Germany. This later already contemplated in its 1815 Constitution a federal action against the Member State that did not fulfil its federal obligations. In the second part, as the main topic of this work, we will develop the two cases of this century, in which the direct rule has been put into

practice as an instrument of control. We will analyse, from a legal point of view, the suspension of the Northern Ireland Assembly, which has been agreed up to four times since the enforcing of the Belfast Agreement in 1998, also known as the Good Friday Agreement, during the Tony Blair's term that led to the Parliament of Westminster to exert the direct rule for a five years period. As well as what happened recently in our country with the unilateral declaration of independence of Catalonia, back in October of 2017 and the decision of the Spanish Government to apply article 155 of the Spanish Constitution. Both are examples of the exercise of a power of control that Governments hold to face two different situations that have put the rule of law in check.

II. - THE DIRECT RULE

Before getting started with the main subject of this paper, it is necessary to explain what is meant by direct rule and when it is used.

1. - Definition

The direct rule is closely linked with the protection that the Federation offers in order to restore the public order or the validity of the Fundamental Rights. The direct rule is an action against an offender Member State, that intervention is made at the request of a Member State, or is promoted by the Federation, when the Member State is unable to or does not ask for it¹.

The direct rule, originally, appears in the Constitution of those Decentralised States as a prerogative of the central power to safeguard the common interest and the public order, as well as the rights of citizens and the Constitution, undertaking all the actions that the Constitution contemplates to do so, when one of the Decentralised States fails to comply with its obligations and duties. In other words, the direct rule consists of the suspension of the self-government that the Decentralised States enjoy, which means that the Central State itself assumes the powers granted by the Constitution and the Acts to the non-complying Decentralised State.

All in all, the direct rule is an instrument held by the Central State to protect the Public Order, the Fundamental Rights and the Constitution when one of the Decentralised States Acts against them.

¹ GÓMEZ ORFANEL, G. 'La coerción federal en el Derecho comparado'. *Cuadernos de Derecho Público*. September-December 2005. Issue 26. Page 46. Available at: <https://revistasonline.inap.es/index.php?journal=CDP&page=article&op=view&path%5B%5D=766>

2. - The Direct Rule in Comparative Law

After this first approach, we will analyse the legal systems of different States that include the direct rule in their Constitutions.

2.1. - Italy

Prior to 2001, the *Costituzione* only assigned full competence in matters of local legislation to those Regions that enjoyed a special status, those special Regions are Sicily, Valle d'Aosta, Sardinia, Friuli-Venezia Giulia and Trentino-Alto Adige (article 116)².

In 1999, Italy, like other States with regional entities, incorporated some legal techniques of the federal control models³, and on this matter article 126 of the *Costituzione* disposes that:

'With a motivated decree of the President of the Republic, the dissolution of the Regional Council will be arranged and the dismissal of the President of the *Giunta* who have carried out Acts contrary to the *Costituzione* or serious violations of the law. Dissolution and dismissal may also be arranged for reasons of national security. The decree will be adopted after hearing a commission of deputies and senators established, for regional matters, as it is stipulated by the law...'

In addition, with the reform of the Constitutional Act of 18th October 2001, new powers were introduced for all the Regions, both ordinary and special, in administrative area and regulatory authority, thus granting more autonomy to the Regions and their Local Governments. However, the *Corte Costituzionale*, in its judgement 303/2003 emphasizes the unitary character of the State and the subsidiarity of the powers attributed to the ordinary Regions⁴. Additionally, a new paragraph was added to article 120 of the *Costituzione*, establishing for the first time something very significant, the possibility that the Government could replace regional authorities in case of breach of International Acts and Treaties, or of European Law, of serious danger for the integrity

² Costituzione della Repubblica Italiana, 22nd December 1947. *Gazzetta Ufficiale*, 27th December 1947, Issue 298. Available at: <http://www.gazzettaufficiale.it/dettaglio/codici/costituzione>

³ GÓMEZ ORFANEL, G. *op. cit.* Page 52.

⁴ SCHILLACI, A. 'El sistema constitucional de Italia'. *Revista de Derecho Constitucional Europeo*. 2010. Issue 14. Page 109.

and public safety, or when the preservation of the legal or economic unity requires it and in particular the safeguard of the basic levels of the benefits relative to civil and social rights, without taking into consideration for it the territorial limits of the bodies of Local Government⁵.

In this case, we are faced with a substitutive direct rule for reasons of breach of legal duties, but also for other matters that are not completely specified by the constitutional text, leaving a large list of possibilities for its enforcement. Something very similar to what happens in the case of the Spanish Constitution, which will be addressed later.

If the Regions, which have been granted the power to participate in the elaboration of the European Union normative Acts, fail to comply with their obligations derived from international and European Acts, the State may also make use of the power of substitution (article 117.5). For this case, the Act 131/2003 of 5th June 2003, known as *legge 'La Loggia'*, provides with the procedure to carry out the substitution. This Act expressly refers to the substitution as a remedy for the violation of the Law of the European Union, and establishes an emergency procedure that simplifies the procedural guarantees (article 8.2 and 4)⁶. The practice of the substitution powers, whether carried out either by the Government of the Republic or by the appointment of an *ad hoc* Commission, should preserve the principles of proportionality, loyal collaboration and subsidiarity.

2.2. - Austria

Since 1920, article 100 of the Austrian Federal Constitution (*Österreichische Bundesverfassung*) regulates the dissolution of the Parliament of the *Länder* (*Landtage*):

⁵ GÓMEZ ORFANEL, G. *op. cit.* Page 53.

⁶ Legge 5 giugno 2003, n. 131. *Gazzetta Ufficiale*, 10th June 2003, Issue 132. Available at: http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2003-06-10&atto.codiceRedazionale=003G0148&queryString=%3FmeseProvvedimento%3D6%26formType%3Dricerca_semplice%26numeroArticolo%3D%26numeroProvvedimento%3D131%26testo%3DLegge%2B5%2Bgiugno%2B2003%252C%2Bn.%2B131%26annoProvvedimento%3D2003%26giornoProvvedimento%3D5¤tPage=1

'Every *Landtag* can be dissolved by the Federal President on the motion of the Federal Government with the assent of the *Bundesrat*. The assent of the *Bundesrat* is decided in the presence of one-half of the members and with a majority of two thirds of the votes cast. The representatives of the *Land*, whose *Landtage* is to be dissolved, may not take part in the voting⁷.

The aforementioned precept has not been subjected to substantial modifications, but one of the few changes introduced is very remarkable. According to the *Bundesverfassung*, the dissolution of the *Landtage* can only be ordered once for the same reason. After the dissolution of the *Landtage*, new elections must be scheduled within three weeks.

The *Bundesverfassung* does not limit the cases by which the *Landtage* can be dissolved, having said that we must remember that the *Länder* do not have powers beyond those that the Acts have not attributed to the Federal Government, so their powers are limited to the reform of their own Constitutional Acts with a majority of two thirds of the votes cast. The Federation plays a dominant role in the Austrian political system⁸. Consequently, the state constitutions are limited to making a catalogue of express references on the basic principles of the democratic and social rule of law, on the exercise of certain rights and fundamental freedoms, on provisions relating to population, territory, capital, headquarters of the institutions, symbols of the *Land* and clauses protecting the linguistic minorities, as well as their political institutions, local organization or election of the members of the *Bundesrat*; these Acts must respect the *Bundesverfassung* and the treaties of the European Union⁹. Taking all this into account, we can conclude that the infringement of these supra-*Land* Acts will cause the dissolution of the *Landtag*.

⁷ Bundes-Verfassungsgesetz, 1st October 1920. *Bundesgesetzblatt*, 2nd January 1930, Issue 1/1930. Available at: https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=BgblAlt&Dokumentnummer=bgb1930_0001_00001 (English version)

⁸ BUSSJÄGER, P. 'Between Europeanization, Unitarism and Autonomy. Remarks on the Current Situation of Federalism in Austria'. *Revista d'estudis autonòmics i federals*. 2010. Issue 10. Page 33.

⁹ DE CUETO NOGUERAS, C. 'La organización territorial del Estado Austríaco: ¿un caso de regionalismo o federalismo unitario?' *Revista de estudios regionales*. 2001. Issue 60. Pages 122-123.

2.3. - Switzerland

As in Austria, Switzerland is a Federal State composed by twenty six Cantons that enjoy, according to the Federal Constitution of the Swiss Confederation, of certain autonomy since they are able to take on all those powers that the Constitution has not expressly conferred to the Federal Assembly. Therefore, the *Grand Conseil* of each Canton will be able to legislate on those matters that are not granted to the Federal Assembly, always bearing in mind that Cantonal Law cannot contain stipulations that are contrary to Federal Law.

As a consequence, in Swiss Constitutional Act, the institution of the Federal Inspection (*Bundsaufsicht*) holds a central position. The Federal Inspection is the non-judicial activity through which the Federation makes sure that the Cantons apply the Federal Law, known as federalism of execution. The Swiss legal system also includes the legal concept of the Federal Execution (*Bundesexecution*), and both legal institutions are often confused. In general terms, the Federal Inspection is the ordinary and continuous procedure of federal control, while the Federal Execution requires that a Canton obstinately refuse to comply with the requirements that the Federation has made¹⁰.

The Swiss doctrine¹¹ bases its distinction on the legal instruments used by both institutions. Thus, substitution would be the usual instrument to proceed in cases of Federal Intervention, while the quashing or annulment would be used for Execution. The Execution, whose exercise is attributed by the Constitution to the Federal Assembly (article 173.1.e)¹², is an instrument that is rarely used because it is considered much more important and dangerous for federal harmony. On the contrary, the Federal Council, as the highest executive authority of the Federation (article 174), is competent to ensure compliance with Federal Law (article 186.2 and 4) which is a more common activity.

¹⁰ GÓMEZ ORFANEL, G. *op. cit.* Page 55.

¹¹ BURCKHARDT, W. *Kommentar von Bundesverfassung*. Bern. Stämpfli. 1914. Page 685. FLEINER, F. *Schweizerisches Bundesstaatsrecht*. Tübingen. Mohr Siebeck. 1923. Page 63. HANGARTNER, Y. *Grundzüge des schweizerischen Staatsrechts*. Zürich. Schulthess. 1980. Pages 86-87.

¹² Constitution Fédérale de la Confédération Suisse, 18th April 1999. *Recueil Officiel du Droit Fédéral*, 11th August 1999, Issue 1999 2556. Available at: <https://www.admin.ch/ch/fr/rs/c101.html>

2.4. - Germany

Already at the time of the *Deutscher Bund* (1815-1866) the institutions of Federal Intervention (*Bundesintervention*) and Federal Execution (*Bundesexecution*) were contemplated in the legal system. The first one was to be understood as the aid of the Federation to a Member State threatened by actions contrary to the Constitution. The Federal Execution, on contrary, was the action by the Federal Assembly for the adoption of necessary measures to address the breach of the founding agreements by a Member State¹³.

With the elaboration of the Weimar Constitution, the institution of the Federal Execution was reintroduced and, also, extraordinary powers were granted in this matter to the President of the *Reich*. According to article 48 of the Weimar Constitution:

'If any *Land* does not fulfil the duties imposed upon it by the Constitution or the Acts of the *Reich*, the *Reich* President may enforce such duties with the aid of the armed forces.

In the event that the public order and security are seriously disturbed or endangered, the *Reich* President may take the measures necessary for their restoration, intervening, if necessary, with the aid of the armed forces. For this purpose he may temporarily abrogate, wholly or in part, the fundamental principles laid down in Articles 114, 115, 117, 118, 123, 124, and 153.

[...]¹⁴.

The premise to proceed to the intervention was the unfulfilment of the duties imposed by the Constitution and the Federal Acts. The Constitution did not refer to every single obligation assumed by the *Land*, but only to those obligations derived from *Land*'s position as a Member State of the Federation as a consequence of its subordination and incoordination to the *Reich*. It would be the President of the *Reich* who would decide on the existence of a violation of these duties, without prior involvement of the Courts. The decision should immediately be submitted to the *Reichstag*. As a body of political control, it had the power to require the President to rescind the measures taken. In addition, the *Land* could go to the State Court

¹³ GÓMEZ ORFANEL, G. *op. cit.* Page 55.

¹⁴ Die Verfassung des Deutschen Reichs, 11th August 1919. *Reichsgesetzblatt* 1919. Issue 1383. Available at: <http://www.verfassungen.de/de/de19-33/verf19-i.htm> (English version)

(*Staatsgerichtshof*) as a competent authority to hear about legal-public facts at issue between the *Länder* or between the *Reich* and a *Land*, corresponding to the President of the *Reich* the enforcement of the judgement¹⁵.

Article 48.1 of the Weimar Constitution refers to the armed force as the procedure to enforce compliance with the legal system, however this is the most extreme means. There are, also, other actions that the President can promote, such as the suspension of the authorities of the *Land*, the appointment of commissioners, etc.

With the Basic Law for the Federal Republic of Germany of 1949, and continuing with the German constitutional tradition, the institution of Federal Execution (*Bundeszwang*) is incorporated again in article 37:

'(1) If a *Land* fails to comply with its obligations under this Basic Law or other federal Acts, the Federal Government, with the consent of the *Bundesrat*, may take the necessary steps to compel the *Land* to comply with its duties.

(2) For the purpose of implementing such coercive measures, the Federal Government or its representative shall have the right to issue instructions to all *Länder* and their authorities¹⁶.

It should be noted that, in addition to the institution of Federal Execution, two other are regulated, which also entail federal control over the *Länder* and from which it must be differentiated. This two institutions are the Federal Supervision (*Bundesaufsicht*) and the Federal Intervention (*Bundesintervention*), regulated in articles 84 and 91.2 of the Basic Law, respectively. According to the Basic Law, the Federal Supervision is the faculty that Federal Government holds to supervise the implementation of the federal Acts by the *Länder*. The Basic Law considers the Federal Intervention as a power of the Federal Government to submit to its authority the police forces of a *Land* when it has no possibilities or is unwilling to face a danger that

¹⁵ ANSCHÜTZ, G. *Die Verfassung des deutschen Reichs*. Berlin. Georg Stilke. 1921. Pages 269-275

¹⁶ Grundgesetz für die Bundesrepublik Deutschland, 8th May 1949. *Bundesgesetzblatt*, 23rd May 1949. Available at: <https://www.btg-bestellservice.de/se/index.php?sid=164ed98ccb88ac6b0af099234b42baf0&navi=1&subnavi=50&anr=80201000> (English version)

threatens the rule of law of the Federation or of the own *Land*, being able, in turn, to put under his orders, if necessary, the police forces of other *Länder*¹⁷.

Regarding the Federal Execution, also known as Federal Coercion, it is an instrument with a clear aim since the Federation is granted the power to ensure if necessary through force, the application of the Basic Law and the other Federal Acts by the *Länder*.

The coercive actions of the Federation must meet two requirements, a formal one and a material one. Under the material premise, prior to the Federal Intervention, there must be a breach of the federal obligation by a *Land*. Such breach must be objective, regardless of the intentionality or not of the *Land*. Besides, the unfulfilment can occur due to either active or omissive behaviour. Another important element is that the action or the omission must be attributable to a *Land* as a federated entity, and not to one of its lower entities or other dependent territorial administrations (municipalities, *Kreise* or districts)¹⁸.

The failure to fulfil the obligations does not have to be express, but it can be inferred from the interpretation of the Constitution or the Federal Acts. In addition, it may be the breach of duties arising from the principles of unity and loyalty, which are the basis on which Germany is constituted as a Federal State, the cause of the Federal Intervention. Either way, the obligation must be of a legal-public nature, that is, it must be an obligation that corresponds to the *Land* because of its status as an integral part of the German Federal State. Thus, the non-compliance of legal-private obligations assumed by the *Länder* are excluded from the federal control¹⁹.

Furthermore, the Federal Coercion is a subsidiary instrument, so that the coercion can only be used when the compliance with the corresponding obligations can not be demanded from the *Land* in a less cumbersome way, especially the judicial ones. Although it is implicit that before enforcing this exceptional mechanism, all the channels of dialogue, negotiation and agreement must have been exhausted²⁰.

¹⁷ ARROYO GIL, A. 'Unidad, lealtad y coerción federal (o estatal) en Alemania y España'. *Revista Jurídica Universidad Autónoma de Madrid*. 2015. Issue 31. Page 61.

¹⁸ *Ibidem*.

¹⁹ *Ibidem*.

²⁰ ARROYO GIL, A. *op. cit.* Pages 61-62.

With regard to the formal basis, it should be noted that this refers to the two branches of the political power, executive and legislative, since it requires the intervention of both the Federal Government and the *Bundesrat* through the approval of different resolutions²¹.

Three are the steps that the Federal Government must follow to apply the Federal Coercion. First, the Federal Government must verify the existence of a federal obligation and that this has been infringed by a *Land*. The *Land* can appeal to the Federal Constitutional Court the Federal Government's resolution, questioning both the existence of that obligation and, in case of recognition of its existence, that a breach has occurred.

In a second stage, the Federal Government will issue another resolution stating its decision to implement the corresponding coercive action, in order to force the *Land* to comply with the federal obligation. In this resolution, the Federal Government must determine what will be the concrete means it will carry out for that purpose.

The first resolution of the Federal Government has a legal nature, hence it can be appealed at the Federal Constitutional Court. The second one, however, has a political nature, being left to the discretionarily of the Federal Government, without it being able to be revised later in the jurisdiction²².

Finally, it is the turn of the *Bundesrat*, which must approve, by absolute majority, a third resolution in which it will give or not, totally or partially, its consent both to the Federal Government's decision to take the coercive measures, and to the concrete measures in which the coercive action consists.

The Basic Law does not refer to the specific coercive measures, and, given that to date a procedure of this importance has never been activated, we do not have constitutional jurisprudence that can serve as a guide to know what must be done. What is clear is that, whatever the measures adopted, based on the principle of federal loyalty (*Bundestreue*), they must respect the principles of suitability and proportionality that derive from it.

²¹ *Ibidem* Page 62.

²² *Ibidem*.

It is also evident, since this is clear from the Basic Law, that it is strictly prohibited to use the Federal Army by the Federation in cases of federal coercion, because, as stipulated in article 87.a.2 of the Basic Law, the Federal Army can only be used outside the State and in defence of those cases in which the Constitution so expressly provides. By not making article 37 reference to this measure it is understood that it does not fit for Federal Coercion.

2.5. - United Kingdom

The Parliament of the United Kingdom has granted powers, through each of the devolution agreements held in 1998, to Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly and the London Assembly and their associated executive bodies. Nevertheless, this devolution may be suspended and replaced by direct rule by the Government of the United Kingdom, exercising the strong hegemony of the English centralism²³.

As a result of the principle of supremacy of Westminster, the legislator provided certain control mechanisms of the new Parliaments and Assemblies. The main control mechanism corresponds to the Courts, although other means also exist²⁴.

The first of these controls consists of the attribution to the Presiding Officer of the function of ensuring that any legislative proposal presented at the Assemblies falls within the competence framework attributed by the different devolution agreements. Secondly, four weeks have passed since the adoption of the act in the Parliament until it can be subject to the royal assent. During this period, the act is paralyzed and may be challenged before the Judiciary Committee of the Privy Council because it is understood that the entire bill or any of its provisions fall outside the competence of the Parliament. Likewise, the Government of the United Kingdom can interfere directly in the legislative action of these entities through the Ministers for Scotland and Northern Ireland. These Ministers must avoid submitting a bill to royal assent when they have reasonable doubts about whether the bill is violating international agreements or overstepping the attributed powers²⁵.

²³ BOMBILLAR SÁENZ, F. M. 'El sistema constitucional del Reino Unido'. *Revista de Derecho Constitucional Europeo*. January-June 2011. Issue 15. Pages 169-173.

²⁴ CANTERO MARTÍNEZ, J. 'La devolución de poderes en el Reino Unido: tres modelos diferentes de descentralización para Escocia, Gales e Irlanda del Norte (1)'. *Revista de administración pública*. May-August 2001. Issue 155. Page 378.

²⁵ CANTERO MARTÍNEZ, J. *op. cit.* Pages 378-379.

In the case of Northern Ireland, it is also possible that the Westminster Parliament itself, at the request of the Minister for Northern Ireland, carries out a previous control to the royal assent. In this case, the Assembly is obliged to present the act at the Parliament, so that within twenty days, it will rule on the matter. If after this period, none of the Houses has objected or rejected the motions, the bill may be submitted to the royal assent. If by the urgency of an act this can not be submitted to the control of the Parliament, a *posteriori* control of the act can be carried out, being able to leave it without effect if one of the Houses considers it opportune through an Order in Council²⁶.

On the other hand, the Government of the United Kingdom has the power to revoke the rules of the territorial Ministers by Order and to compel the Ministers to adopt statutory instruments when there are reasonable grounds to believe that the rules of the Ministers may be incompatible with an international obligation. In the case of Northern Ireland, the Government of the United Kingdom can not only nullify the Acts of the Northern Ireland Assembly, but can also adopt all the necessary measures to prevent the act from having legal effects²⁷.

Finally, judicial control is another of the mechanisms established by the legislator to guarantee respect for the division of powers. This control falls on the Judicial Committee of the Privy Council.

Exceptionally, the Government of the United Kingdom can use the direct rule as a control mechanism.

Direct rule occurred in Northern Ireland from 1972 to 1998 during the Troubles, and for shorter periods of time between then and 2007. At that time, major policy was determined by the British Government's Northern Ireland Office, under the direction of the Secretary of State of Northern Ireland. Daily matters were handled by Government departments within Northern Ireland itself, and Northern Ireland continued to elect members of parliament to the Parliament of the United Kingdom as regularly.

Afterwards, we will analyse more in depth what the direct rule supposed.

²⁶ *Ibidem* Page 379.

²⁷ *Ibidem*.

2.6. - Spain

Article 155 of the Spanish Constitution incorporates what in other Federal States is known as Federal Coercion or Federal Execution, which is influenced, although with some differences, by article 37 of the German Basic Law that regulates the institution known as *Bundeszwang*²⁸. This mechanism of extraordinary and exceptional control²⁹ has nothing to do with the ordinary control procedures that article 153 provides, as in other States in which it is regulated, had never been used, so there is no precedent or a development act that contemplates the scope and requirements of such a measure.

According to article 155 of the Spanish Constitution:

‘1. If an Autonomous Community does not fulfil the obligations imposed upon it by the Constitution or other Acts, or Acts in a way seriously prejudicing the general interests of Spain, the Government, after lodging a complaint with the President of the Autonomous Community and failing to receive satisfaction therefore, may, following approval granted by an absolute majority of the Senate, take the measures necessary in order to compel the latter forcibly to meet said obligations, or in order to protect the above-mentioned general interests.

2. With a view to implementing the measures provided in the foregoing clause, the Government may issue instructions to all the authorities of the Autonomous Communities’.

In order to activate the measures in which the direct rule can be materialized, three conditions are necessary. Firstly, there must be an action or omission. Secondly, the action or the omission must be imputed to an Autonomous Community as a political-territorial entity. And thirdly, the breach of the constitutional or legal obligations must be effective³⁰. Although it is not determined what kind of breach should be.

The Spanish Constitution does not regulate the procedure that must be followed for the exercise of the direct rule, although it can be deduced some steps to follow.

²⁸ GÓMEZ ORFANEL, G. ‘Alcance del artículo 155 de la Constitución’. *Diario La Ley*. 2017. Issue 9049. Available at: <http://diariolaley.laley.es/home/DT0000253974/20170925/Alcance-del-articulo-155-de-la-Constitución>

²⁹ SSTC 6/1982, de 22 de febrero; 27/1987, de 27 de febrero; y 49/1988, de 22 de marzo.

³⁰ CALAFELL FERRÁ, V. J. ‘La compulsión o coerción estatal (estudio del artículo 155 de la Constitución Española)’. *Revista de Derecho Político*. 2000. Issues 48-49. Pages 104-107.

After the assessment of the infringement, the first step the Government must take is to send to the President of the Autonomous Community whose actions are in question a written request. This document constitutes the last warning to the non-compliant Autonomous Community, in this way the Autonomous Community is granted the opportunity to cease its conduct³¹. As for as the form and the period of time available to the President of the Autonomous Community to respond to the request, the Constitution does not establish anything. Although in relation to the content of the requirement nothing is established either, in opinion of GIL-ROBLES the Government must state in the requirement the specific measures that intends to adopt³².

Article 189 of the Senate Regulations establishes the processing of the concession to the Government by this House of the authorization to adopt the measures in which the direct rule will consist:

‘1. If the Government, in the cases contemplated in article 155.1 of the Constitution, requires the approval of the Senate to adopt the measures to which it refers, it must present before the President of the Chamber a written document in which the content and the effects of the proposed measures is manifested, as well as the justification of having made the corresponding request to the President of the Autonomous Community and of its non-compliance.

2. The Senate assembly shall send said document and attached documentation to the General Commission of the Autonomous Communities, or it shall proceed to constitute a joint Commission in the terms provided in article 58 of these Regulations.

3. The Commission, without prejudice to the provisions of article 67, will require, through the President of the Senate, the President of the Autonomous Community so that within the term established, he will send as many details, data and arguments as he deems pertinent and so that designate, if it deems appropriate, the person who assumes the representation for these purposes.

³¹ *Ibidem*. Pages 116-117.

³² GIL-ROBLES, J. M. ‘Artículo 155’. *Comentarios a las leyes políticas. Constitución Española*. Madrid. Edesa. 1988. Page 464.

4. The Commission will formulate a reasoned decision on whether or not the approval requested by the Government should proceed, with the conditions or modifications that, where appropriate, are pertinent in relation to the proposed measures.

5. The Plenary will submit this proposal to debate, with two shifts in favour and two against, of twenty minutes each, and the interventions of the Spokesmen of the Parliamentary Groups that request it, for the same time. Once the debate has concluded, the proposal submitted will be voted on, and the favourable vote of the absolute majority of senators is necessary for the approval of the resolution'.

As a result, the Government of Spain must request the Senate's approval on the measures in which its action will consist within article 155. To do so, the Government must address a letter to the President of the Senate detailing the measures to be applied and must also supply with the written request that was made to the President of the Autonomous Community and his disagreement response.

The Senate must send all the documentation to the General Commission of the Autonomous Communities or form a joint commission among the members of the political parties of the Senate and study the acceptability and suitability of the proposed measures, and may submit amendments to them. The Commission in charge must request the President of the Autonomous Community to come to the Commission and present the appropriate allegations. The President of the Autonomous Community can, in any case, delegate his representation to another member of his Government.

Once all the information has been collected, the Commission must issue a reasoned decision on the acceptance of the measures, their suitability, duration and may introduce the pertinent amendments to the Government's proposal.

Finally, the resulting package of measures must be submitted to vote in plenary session of the Senate, where it must be approved by an absolute majority.

Later on we will address the unilateral declaration of independence of Catalonia as the starting point for the application of article 155 and the measures that have been taken under the shelter of this legal institution.

III. - ENFORCEMENT OF THE DIRECT RULE

1. - The suspension of the Northern Ireland Assembly: the direct rule from Westminster

1.1. - Territorial allocation of power in the United Kingdom: the devolution agreements

The United Kingdom is not a Federal State, even though the reforms introduced in recent years, especially in 1998, as part of the devolution settlements, make it resemble a Quasi-Federal State. In spite of being a unitary State, the United Kingdom is formed by four nations (England, Scotland, Wales and Northern Ireland) with a different linguistic-cultural background, so in this sense we could speak of a plurinational State³³.

Despite this situation, the United Kingdom has always been a centralised State in which England has exercised its hegemony over the other nations. But the demands and nationalist claims of the other nations led to reform the allocation of power. Within this context, decentralisation was carried out following the technique of devolution, as a result the Scotland Act and the Government of Wales Act were approved in 1998. These nations were endowed with self-government institutions with their own competences. The administrative organization of the central Government was adapted to this new constitutional scenario, since part of the powers of the latter were assumed by the new national institutions of self-government. The devolution was conceived as the proper way to preserve the unitary State, and at the same time satisfy the nationalist claims of Welsh and Scots that arose from the seventies³⁴. The devolution it is not a way of federalism nor does it suppose a distribution of the sovereignty of certain powers not reserved exclusively to the State, but these competences are under a constant supervision by the State, and the State has the prerogative to revoke them at any time.

While the devolution operated in Wales is characterized by having a much more executive or administrative role³⁵, in the case of Scotland has operated a model called retaining statute, which is characterized by the specification of the subjects and competences that are retained by the Parliament of Westminster, leaving those that are

³³ BOMBILLAR SÁENZ, F. M. *op. cit.* Pages 169-173.

³⁴ *Ibidem.*

³⁵ *Ibidem.*

not expressly established in the hands of the Scottish Parliament. This implies the total freedom to enact laws except, logically, on those matters that have been reserved to the Parliament of Westminster, for example: Constitution, Crown, succession to the throne, Parliament of the United Kingdom,...³⁶. A very similar model was used for Northern Ireland, but unlike Scotland it has not had the opportunity to develop the competences granted as a result of the various suspensions of autonomy since 1998³⁷, as we will address later.

1.2. - The direct rule origins: the Northern Ireland (Temporary Provisions) Act 1972

The system of the direct rule was originally introduced on 28th March 1972 under the terms of the Northern Ireland (Temporary Provisions) Act 1972 to face the Northern Ireland conflict. The Act took effect immediately on receiving the royal assent on 30th March 1972³⁸. Until then, Northern Ireland had powers transferred under The Government of Ireland Act 1920, this included the existence of an Executive and a Parliament of its own, with limited powers due to the unlimited supremacy of the Parliament United Kingdom³⁹.

According to the Act, the Secretary of State for Northern Ireland would assume three important executive roles under the Stormont regime: the Secretary of State for Northern Ireland was going to assume all the functions which used to belong to the Governor of Northern Ireland, the Prime Minister of Northern Ireland and the Minister of Home Affairs (article 1.1.a)⁴⁰.

The Attorney General for England and Wales was to take over the duties of the Attorney General for Northern Ireland (article 1.2)⁴¹.

³⁶ CANTERO MARTÍNEZ, J. *op. cit.* Page 367.

³⁷ MEDINA ALCOZ, L. *La participación de los entes locales en la elaboración de normas autonómicas y estatales*. Madrid. Instituto Nacional de Administración Pública (INAP). 2009. Pages 147-219.

³⁸ Northern Ireland (Temporary Provisions) Act 1972, 30th March 1972. *UK Public General Acts*, c.22. Available at: <http://cain.ulst.ac.uk/hmso/tpa1972.htm>

³⁹ ALDER, J. 'La devolución de poderes en el Reino Unido'. *Revista Vasca de Administración Pública. Herri-Arduralaritzako Euskal Aldizkaria*. 1993. Issue 35 (II). Pages 71-88.

⁴⁰ Northern Ireland (Temporary Provisions) Act 1972, 30th March 1972. *UK Public General Acts*, c.22. Available at: <http://cain.ulst.ac.uk/hmso/tpa1972.htm>

⁴¹ *Ibidem*.

Finally, the Parliament of Northern Ireland was indefinitely prorogued, with its legislative powers being made available for exercise by the British Government by Order in Council, now the British Government could make Acts for any purpose for which the Parliament of Northern Ireland had power to legislate (article 1.3)⁴².

The direct rule was seen as a temporary measure, with a power-sharing devolution preferred as the solution to the conflict. Consequently, the Government of the United Kingdom granted a legislature Assembly for Northern Ireland through the Northern Ireland Assembly Act 1973, for this reason, elections for the Assembly were called for on 28th June 1973, the Assembly was constituted on 31st July 1973⁴³.

However, all the political institutions that were put into abeyance by the Northern Ireland (Temporary Provisions) Act 1972 were formally abolished by the Northern Ireland Constitution Act 1973 and the institutions remained in the hands of the Secretary of State for Northern Ireland and the Attorney General for England and Wales, except for the Parliament of Northern Ireland that became competence of the Secretary of State for Northern Ireland⁴⁴. The Secretary of State for Northern Ireland could delegate to the Assembly those legislative powers that he considered appropriate.

A power-sharing Executive was established following the Sunningdale Agreement that took place on 21st November 1973⁴⁵. Finally, the Executive and the Assembly were again abolished in July 1974, as they both collapsed with the resignation of the Chief Executive⁴⁶.

Different attempts to implement, unsuccessfully, a power-sharing Executive and devolved Government took place during the following years until the Belfast Agreement was reached in 1998.

⁴² *Ibidem*.

⁴³ Northern Ireland Assembly Act 1973, 3rd May 1973. *UK Public General Acts*, c. 17. Available at: <http://www.legislation.gov.uk/ukpga/1973/17/enacted>

⁴⁴ Northern Ireland Constitution Act 1973, 18th July 1973. *UK Public General Acts*, c. 36. Available at: <https://www.legislation.gov.uk/ukpga/1973/36/contents>

⁴⁵ Sunningdale Agreement, 9th December 1973. Available at: <http://cain.ulst.ac.uk/events/sunningdale/agreement.htm>

⁴⁶ Northern Ireland Act 1974, 17th July 1974. *UK Public General Acts*, c. 28. Available at: <https://www.legislation.gov.uk/ukpga/1974/28/contents>

1.3. - The Good Friday Agreement and the Northern Ireland Act 2000

On 10th April 1998, the Belfast Agreement took place, which would be the greatest exponent of devolution of powers of the nineties. In this case, the legislator uses the transferring statute system to carry out the return of powers. In this model, each and every one of the competences that would be assumed by the assembly was explicitly expressed, leaving the rest of matters not specified for the Westminster Parliament⁴⁷. It was established that both the Northern Ireland Assembly and the Executive would enjoy full legislative and executive powers in all matters that until then had been the responsibility of the Secretary of State and the governmental departments for Northern Ireland (strand one)⁴⁸. A unique form of devolution was introduced in 1999 following the Good Friday Agreement based on a compulsory power-sharing between the unionist and republic communities⁴⁹. This scheme was based on the need to obtain nationalist consent (article 16.3)⁵⁰ so that the institutions of the new dispensation are consociational at both legislative and executive levels, with a stipulation that public power must be exercised in accordance with the principle of 'parity of esteem' between unionist and republicans (article 17.5)⁵¹.

However, and despite its similarity with the distribution of powers with those established in the Federal States, it must not be forgotten that the process of decentralization that took place did not affect in any way the unity of the State and the supremacy of the Parliament of Westminster, so Westminster could suspend the return of powers⁵².

As part of the Northern Ireland devolution process, on 25th June 1998 elections to the Northern Ireland Assembly took place. On 1st July 1998, all the political parties who had won seats during the Northern Ireland Assembly election took their places in the new Assembly Chamber at Stormont. The Assembly met in 'shadow' form as powers had not yet been devolved. But it was not until November 1999, that the House of Lords and the House of Commons decided, within the context of the Northern Ireland Act 1998, that it was time to fully devolve the powers to the Assembly of

⁴⁷ CANTERO MARTÍNEZ, J. *op. cit.* Pages 367-370.

⁴⁸ The Belfast Agreement, 10th April 1988. *UK Public General Acts*. Available at: <https://www.gov.uk/government/publications/the-belfast-agreement>

⁴⁹ LEYLAND, P. 'The multifaceted constitutional dynamics of U.K. devolution'. *International Journal of Constitutional Law*. 2011. Volume 9. Issue 1. Pages 251-273.

⁵⁰ Northern Ireland Act 1998, 19th November 1998. *UK Public General Acts*, c. 47. Available at: <https://www.legislation.gov.uk/ukpga/1998/47/contents>

⁵¹ *Ibidem*.

⁵² CANTERO MARTÍNEZ, J. *op. cit.* Page 375.

Northern Ireland and end the direct rule of Westminster. On 2nd December 1999, the direct rule came to end as the powers were returned to the Northern Ireland Assembly. However, this self-government was not meant to long last.

On 11th February 2000, as a consequence of the lack of consensus to carry out the decommissioning of weapons to the IRA established in the Belfast Agreement, the Secretary of State for Northern Ireland, suspended the Assembly and the Executive, and reimplemented the direct rule of Westminster. The secretary of State for Northern Ireland could order the restoration of the Belfast Agreement, once the behaviour that produced the suspension had been reviewed. In this sense, the members of the Executive and the Assembly would resume office, unless they were no longer eligible⁵³. On 30th May 2000, the Government of the United Kingdom restored the devolution to the Northern Ireland Assembly and the power-sharing Executive.

On 1st July 2001, the First Minister of Northern Ireland and Leader of the Ulster Unionist Party, David Trimble, resigned. Prior to his resignation, and foreseeing the chaos that would arise to elect his successor, he asked Prime Minister, Tony Blair, to suspend the Assembly and other institutions from the Belfast Agreement and once again implement the direct rule of Westminster⁵⁴. We should point out that the procedure of the Northern Ireland Assembly allowed for a six-week period during which a new First Minister and Deputy First Minister would have to be elected otherwise new elections to the Assembly would have to be called. At first, it was decided that the Assembly itself was going to elect a new First Minister, however time passed and no agreement was reached. As a result, on 10th August, the Secretary of State for Northern Ireland announced the suspension of the Assembly until a new Executive was agreed upon. The suspension lasted twenty-four hours and it was successfully restored on 11th August. Six weeks later, on 21st September, the Secretary of State for Northern Ireland suspended the Assembly for twenty-four hours after a failure to break the deadlock and reinstate a First Minister.

⁵³ Northern Ireland Act 2000, 10th February 2000. *UK Public General Acts*, c. 1. Available at: <http://www.legislation.gov.uk/ukpga/2000/1/contents>

⁵⁴ WILFORD, R. 'Northern Ireland: The Politics of Constraint'. *Parliamentary Affairs*. January 2010. Volume 63. Issue 1. Pages 134-137.

1.4. - The suspension of the Northern Ireland Assembly (2002-2007)

During the previous eleven months, the Assembly worked normally. But after a police search in the offices of *Sinn Féin*, a party that was part of the Executive along with the Unionists, the Unionist refused to share power with *Sinn Féin*. As a result, on 14th October, the Secretary of Northern Ireland suspended the Northern Ireland Assembly for the fourth time since the Belfast Agreement. The Northern Ireland Office took over the assembly's departments and the Secretary of State for Northern Ireland became the acting First Minister. All the legislations that were under consideration by the Assembly passed to Westminster and took the form of Order in Council. The Assembly was formally dissolved on 28th April 2003 in anticipation of an election in May 2003, but the Secretary of State decided to postpone the election and it eventually took place on 26th November 2003. However, the Assembly was restored to a state of suspension following the November 2003 election and since January 2004, political parties have been engaged in a review of the Belfast Agreement aimed at restoring the devolved institutions.

During the period between restoration of the direct rule in October 2004 and the re-transfer of powers in May 2007, several attempts to revive the devolution took place, including the Joint Declaration (May 2003), the Comprehensive Agreement (December 2004) and finally the St. Andrew's Agreement (October 2006). Given that all hinged on IRA decommissioning and an end to associated criminality, the Unionist party and the *Sinn Féin* began to work together with a commitment to repeal the Government of the United Kingdom's direct rule⁵⁵.

Following the passing of the Northern Ireland Act 2006 the Secretary of State created a non-legislative fixed-term Assembly, whose membership consisted of the members elected in the November 2003 election. This met for the first time on 15th May 2006, its remit was to make preparations for the restoration of devolved Government to Northern Ireland and for a fully restored Assembly.

1.5. - Northern Ireland (St. Andrew's Agreement) Act 2006

The St. Andrews Agreement of 13th October led to the establishment of a transitional Assembly, formed by the members of the current Northern Ireland Assembly, whose aim was to take part in the preparations of the restoration of the

⁵⁵ WILFORD, R. *op. cit.* Page 137-140.

devolved Government in Northern Ireland. The Agreement marked a series of deadlines for the devolution. First of all, it was demanded that all the political parties that wanted to be part of the Northern Ireland Assembly accept the terms of the St Andrews Agreement for 10th November. Acceptance did not have to be expressed, since neither the Unionists nor the *Sinn Féin* did so, but it was said that there was enough endorsement from all parties to carry on with the process. Secondly, on 24th November the Assembly should nominate candidates for First Minister and Deputy First Minister. On 30th January, the Assembly was dissolved and elections were called on 7th March 2007. The end of the direct rule was scheduled for 26th March, however, if the ministerial offices were not filled to that date, the Secretary of State for Northern Ireland could dissolve the Assembly and the St. Andrews Agreement would fall⁵⁶.

As of March 25, *Sinn Féin* and the Unionists had not reached an agreement, and the deadline was about to expire at midnight on the 26th, they requested a delay to the British Government. On 27th March, the Parliament of Westminster introduced through the emergency legislation the modification of Northern Ireland (St. Andrews Agreement) Act 2006 and granted them six-week delay⁵⁷.

Since the St. Andrews Agreement the Government of the United Kingdom has no longer the power to suspend the Assembly, except in exceptional cases and with a previous emergency legislation (article 4)⁵⁸.

2. - The launching of article 155 of the Spanish Constitution for Catalonia

In the first place, it must be remembered that there is nothing established as to what the measures adopted by the Government should be. So it is possible that the Spanish Government, unlike what is established in the German Basic Law, can make use of the Armed Forces if there is no other solution⁵⁹.

On 10th October 2017, the President of the *Generalitat* of Catalonia declared Catalonia's independence, but at the same time he suspended the independence. As a result, on 11th October, the President of the Government of Spain sent a request to the President of the *Generalitat* of Catalonia to clarify whether he had made a unilateral declaration of independence or not.

⁵⁶ Northern Ireland (St. Andrews Agreement) Act 2006, 22nd November 2006. *UK Public General Acts*, c.53. Available at: <https://www.legislation.gov.uk/ukpga/2006/53/contents>

⁵⁷ *Ibidem*.

⁵⁸ *Ibidem*.

⁵⁹ ARROYO GIL, A. *op. cit.* Pages 64-70.

The request gave a deadline of five days to give an affirmative or negative response, considering that the absence of response or any answer that was not affirmative or negative, would suppose the confirmation of the declaration of independence. Also, in the event that the declaration of independence was confirmed, including the case of absence of response or that the answer was not clear, a new period of three additional days was given to revoke that declaration and restore the constitutional order.

Since the President of the *Generalitat* refused to respond clearly to the request of the national government on two occasions, the Council of Ministers, on an extraordinary session on 21st October, considered the request as not attended and agreed on measures that would be proposed for approval in the Senate.

The proposed measures were based on four goals: the return to legality, the restoration of normalcy and coexistence, economic recovery and the holding of regional elections. These measures can be divided into four groups according to the subject matter, these groups are: government and administration; security, economic management and communications; Catalanian Parliament; and transversal measures.

The measures on Government and Administration granted the authorization to the Government of the Nation to dismiss the President of the *Generalitat* of Catalonia, the Vice President and the rest of the members of the Catalan Government. Their functions would pass to the organs or authorities that were created for that purpose or that the Government designated.

The President of the Government was given the power to dissolve the Parliament of Catalonia. As a consequence, elections would be convened within a maximum period of six months after the implementation by the Senate of the set of measures in which the application of article 155 would consist. The elections would be held, according to the electoral act, fifty four days after the elections have been called.

The administration of the Government of Catalonia would continue to operate, but under the directives of the bodies or authorities created or designated by the Government, which would be mandatory for all staff. The designated body could agree on the appointment, termination or temporary replacement of any authority, public office and personal of the administration, as well as those of any agencies, entities and other related or dependant organs, and its public sector business.

In relation to security, economic management and communications, the authorities appointed by the Government would take command of the *Mossos d'Esquadra*, it would also be agreed the deployment of the State Security Forces in Catalonia and the replacement of *Mossos* if necessary.

The exercise of the necessary economic, financial, tributary and budgetary competences would correspond to the Government, who would guarantee that the State funds corresponding to the Community and the income that it collects would not be destined to activities related to the secessionist process.

The Government would also assume the Centre for Telecommunications and Information Technologies and the Centre for Information Security of Catalonia. In the field of the public autonomous service of audio-visual communication, it would guarantee the transmission of truthful, objective and balanced information, respectful of political, social and cultural pluralism, which would imply the intervention of the Catalan Audio-visual Media Corporation.

Regarding the Catalanian Parliament, it would be prohibited from appointing a new President of the *Generalitat* until a new Parliament emerged from the polls. Nor could it hold investiture sessions or propose any candidate for any position. This prohibition would also be extended to the control role that the Parliament of Catalonia over the Government, nor could it adopt initiatives contrary to the Constitution and the Statute.

With the application of the measures would be declared the nullity and lack of any effect of the provisions, Acts and autonomic resolutions issued by both Parliament and the *Generalitat* that contravene the measures agreed by the Senate.

The aim of the transversal measures was to impose disciplinary sanctions on the officials or labour personnel of the *Generalitat* of Catalonia who did not comply with the measures, without prejudice to inform the Prosecutor's Office. All Acts, actions, resolutions and provisions necessary to ensure compliance with the measures could also be adopted.

Initially, the maintenance of the measures would take place until a new Government of the *Generalitat* took office, resulting from the holding of the corresponding elections to the Parliament of Catalonia. The measures that are authorized by the Senate, would take effect from the moment of its publication in the Official State Gazette.

The calendar for the proceeding of article 155 in the Senate was as follows:

On 24th October, the Senate commission was formed by twenty seven members of the different parties, except for representatives of *Ciudadanos*.

On 26th October. The *Generalitat* of Catalonia had until 10 am to present allegations and appoint a representative, however the *Generalitat* of Catalonia sent the certified fax with the allegations three minutes later than the maximum deadline, and was registered in the Senate at 10:23. Despite the delay, the allegations were admitted.

The allegations consisted of a nine-page letter in which Carles Puigdemont accused the central Government of having exceeded, with the proposed measures, the limits allowed by article 155. In this letter he claimed that with the application of the measures an already complex and extraordinary situation was aggravating because the Spanish Government was taking away Catalonia's political autonomy.

The Senate committee approved with 22 votes in favour, 5 against and no abstention the provisional text of the measures proposed by the Government of Spain. Likewise, it rejected the allegations of the *Generalitat*. An amendment of the Socialist Party, in favour of the gradual implementation of the measures, was accepted. Other two amendments by the same party remained pending for the plenary session that would take place the next day; one with the possibility of halting the 155 measures if there was a call for early elections by the President of the *Generalitat*, an amendment that was withdrawn after the unilateral declaration of independence was presented for voting in the Parliament of Catalonia; another concerning the control of TV3 and the Catalan public media, which was accepted at last minute by the Senate in plenary session.

On 27th October, the Senate plenary session, after a long debate, approved the authorization to apply the agreed measures with 214 votes in favour; 47 against; and one abstention. In parallel, the Parliament of Catalonia held another plenary session in which a unilateral declaration of independence was approved to constitute a Catalan republic as an independent State.

After the approval in the Senate of the measures proposed by the Government and the unilateral declaration of independence made in the Parliament of Catalonia, the President of Spanish Government convened an extraordinary Council of Ministers, and at the end, announced the approval of five Royal Decrees. In them the following provisions were established: First, the dismissal of the President of the *Generalitat*, Carles Puigdemont i Casamajó⁶⁰. Second, the dismissal of all the members of the Catalan Government, including the Vice President, Oriol Junqueras i Vies⁶¹. Third, the assumption of the powers of the Catalan Offices by the corresponding Ministries. The President of the Government, Mariano Rajoy, and the Vice President of the Government, Soraya Sáenz de Santamaría, assumed the functions and competencies that corresponded to the President and Vice President of the *Generalitat* of Catalonia respectively, although the President of the Government delegated all the functions of the President of the *Generalitat* as well in his Vice President⁶². Fourth, the abolition of the Offices of the President and the Vice-President of the *Generalitat*, of the Advisory Council for the National Transition, of the Special Commission on the violation of Fundamental Rights in Catalonia, of the Council of Public Diplomacy of Catalonia and of all the Delegations of the Government of Catalonia the Government of Catalonia, with the exception of the European Union delegation⁶³. Finally, the Parliament of Catalonia was dissolved and regional elections were call on 21st December⁶⁴.

Also that night, the Home Minister, Juan Ignacio Zoido, as head of the Catalan Home Office dismissed the Major of the *Mossos d'Esquadra*, Josep Lluís Trapero⁶⁵.

⁶⁰ Real Decreto 942/2017, 27th October 2017. *Boletín Oficial del Estado*, 28th October 2017, Issue 261. Available at: https://boe.es/diario_boe/txt.php?id=BOE-A-2017-12332

⁶¹ Real Decreto 943/2017, 27th October 2017. *Boletín Oficial del Estado*, 28th October 2017, Issue 261. Available at: https://boe.es/diario_boe/txt.php?id=BOE-A-2017-12333

⁶² Real Decreto 944/2017, 27th October 2017. *Boletín Oficial del Estado*, 28th October 2017, Issue 261. Available at: https://boe.es/diario_boe/txt.php?id=BOE-A-2017-12329

⁶³ Real Decreto 945/2017, 27th October 2017. *Boletín Oficial del Estado*, 28th October 2017, Issue 261. Available at: https://boe.es/diario_boe/txt.php?id=BOE-A-2017-12334

⁶⁴ Real Decreto 946/2017, 27th October 2017. *Boletín Oficial del Estado*, 28th October 2017, Issue 261. Available at: https://boe.es/diario_boe/txt.php?id=BOE-A-2017-12330

⁶⁵ Orden INT/1038/2017, 28th October 2017. *Boletín Oficial del Estado*, 28th October 2017, Issue 261. Available at: https://boe.es/diario_boe/txt.php?id=BOE-A-2017-12353

With the elections of 21st December, it was expected that the situation in Catalonia would change and a Government would be reinstated within the legality. However, to date Catalonia still has no Government and the direct rule is in force, because despite the fact that *Ciudadanos* won the elections, the separatist parties continue to have the majority of seats in the Parliament and they do not give up in their desire to establish the Catalan Republic.

After the elections, the Catalan Parliament elected Roger Torrent, member of *Esquerra Republicana de Catalunya* (ERC), as their new speaker. He proposed the former President of the *Generalitat*, Carles Puigdemont, who had fled to Belgium, as the candidate for re-election as President of the *Generalitat*. However, after the Constitutional Court ruled that Puigdemont could not assume the presidency from abroad, the Catalan Parliament delayed Puigdemont's investiture as he was facing arrest on possible charges of rebellion, sedition and misuse of public funds. Faced with this political deadlock, the other pro-independence leaders determined that the pro-independence movement should outlive Puigdemont, so the former Catalan President announced on 1st March he would step his claim aside in order to allow detained activist Jordi Sànchez, from his *Junts per Catalunya* alliance, to become President instead. However, as Spain's Supreme Court did not allow Sànchez to be freed from jail to attend his investiture ceremony, Sànchez ended up giving up his candidacy on 21st March in favour of former Catalan Government spokesman Jordi Turull, who was also under investigation for his role in the referendum.

Turull was defeated in the first ballot of a hastily convened investiture session held on 22nd March, with only his *Junts per Catalunya* alliance and ERC voting for him and the *Candidatura d'Union Popular* (CUP) abstaining, resulting in a 64–65 defeat. The next day, and less than twenty four hours before he was due to attend the second ballot, the Supreme Court announced that thirteen senior Catalan leaders, including Turull, would be charged with rebellion over their roles in the 2017 unilateral referendum and subsequent declaration of independence. In anticipation of this ruling and in order to avoid appearing in court, Marta Rovira, ERC's general secretary and deputy leader to jailed Oriol Junqueras, fled the country to Switzerland. This prompted the Supreme Court to rule that Turull and several others would be remanded in custody without bail. As a result, the Parliament speaker Roger Torrent cancelled Turull's second investiture ballot. Turull's first ballot nonetheless started the clock towards automatic parliamentary dissolution, meaning a new regional election would be called

for 15th July if no candidate was elected as President of the *Generalitat* before 22nd May.

After these events, the Parliament speaker, Roger Torrent, called a new investiture session on 13th April with the aim to elect Jordi Sànchez as President, however the Supreme Court refused, once again, to release him from prison. This session was postponed.

Finally, on 10th May the former President of Catalonia, Carles Puigdemont, appointed Quim Torra, a member of his political party, as the temporary President of Catalonia. In consequence, the Speaker of the Parliament proposed him as the new President of the *Generalitat*. The first investiture session was held on 12th May, in order to invest Quim Torra as the new President of Catalonia, his appointment had to be agreed by an absolute majority. As he did not pass the first investiture session, a second round was called on 14th May. At the end of the second voting session, Quim Torra was appointed President of the *Generalitat* by the Parliament.

According to the text approved by the Senate back in October, the application of article 155 would end once the new Government for Catalonia had taken office. However, the Spanish Government has decided to stop the direct rule, but they are retaining the control of the accounts of the *Generalitat*, with the aim of preventing public funds from being used to defray the expenses to make the Catalan Republic effective. Moreover, the central Government does not rule out the return to the direct rule if the new Catalan executive declares, once again, the independence of Catalonia.

IV. - CONCLUSION

The direct rule does not follow the same pattern in all the legal systems in which it is contemplated, since as we have seen it sometimes serves to replace a Regional Government and at other times its final objective is the convening of regional elections.

In any cases, one thing is clear, as we have seen, the direct rule is an institution with a long legal tradition, especially in federal countries, and which has been brought to our legal system as a way to deal with serious threats to the rule of law. It is an exceptional method of control held by the Government of the Federation that must be applied in those cases in which there is a serious and repeated breach of the obligations imposed by the Constitution and the Acts, thus violating the harmony of the State. And that should only be applied ultimately, when all the ordinary control

mechanisms provided by the legal order have not been sufficient to end with the failure of the decentralised State.

As we have seen, since this measure is so special, the legal systems do not foresee the cases in which it must be applied. And in the Spanish and Italian cases, a clear and specific procedure is not regulated in this regard, Germany, on the other hand, has a very clear procedure in case it were the case of having to apply article 37 of the Basic Law.

In the case of Northern Ireland, the direct rule has been used as a mechanism to combat terrorism and negotiate in the peace process. Although it should be noted, that the British Government could make use of it, for any reason regarding the other Nations since it has always been an institution created to its measure according to the case.

However, I think that nowadays to keep the direct rule as it was originally conceived has no meaning. Lately, the British Government uses the direct rule as a threat instrument to deal with situations of political deadlock that take place in the Parliaments or Assemblies, especially in Northern Ireland. I think that now the direct rule is more an instrument that the British Government wants to use in order to get back to the English centralism. It is well known that the British Government tends to force agreements between the main political parties of Northern Ireland by threatening to reinstate the direct rule. In this way, the political parties are dissuaded from remaining in a deadlock on a subject that is discussed within the Northern Ireland Parliament. Recently, we have the example of the disagreements with budgets of Northern Ireland. The *Sinn Féin* and the DUP did not reach an agreement regarding the budget for 2019, and the Secretary of State for Northern Ireland gave them four weeks to present to the executive of Theresa May a proposal of budget for next year. If they could not reach the agreement, the Secretary of State would proceed to establish the direct rule on budgetary matters and call new elections. I believe that the direct rule should not be used for this purpose, but that other more appropriate mechanisms should be used, since the direct rule was an instrument to combat terrorism and prevent the IRA from taking over the Northern Irish institutions. It should also be the Parliament of Northern Ireland itself that establishes a procedure to avoid parliamentary deadlocks, they could adapt, for example, the Basque investiture system that prevents the repetition of elections and transferring it to other situations of possible political deadlocks.

In my opinion, the direct rule should be used for those cases where the rule of law is at great danger as a consequence of repeated non-compliance with constitutional obligations or it has already been violated. The aim of the direct rule should be the holding of elections to Parliament, but before these elections take place those politicians or political parties that promote the infringement of the Constitution should be declared ineligible by the Constitutional Court as the guarantor body of the Constitution and the Fundamental Rights. And in the last resort, if the new Government continues to fail to comply with the constitutional obligations, the central power would suspend the decentralized State self-government, leaving in the hands of the Central State all the competencies that would have been attributed to the decentralised State.

In addition, the direct rule, in the case of the Spanish Constitution, has been conceived as a deterrent measure, and I deeply believe that as such it is useless, since the lack of development content is not clear what should be the scope of this. In my opinion, for the direct rule to be satisfactorily applicable, it is necessary the elaboration of an act that develops the aspects related to the content of the direct rule. This act would have to thoroughly establish the situations in which the direct rule would be enforced. It also needs to be regulated the entire procedure the Government must follow when the direct rule is about to be enforced. This act should include a list of measures that can be taken under the direct rule, depending on which of the prearranged situations the country is. This type of act is necessary, not only in Spain, but also in those legal systems that as the Spanish one do not have the direct rule developed.

Although we cannot compare what happened in Northern Ireland and Catalonia, since they are two different legal-political contexts, we can say that the direct rule has been used with the same objective, to return to the political and social normality of both territories and reinstate the rule of law. Although I think that in the case of Catalonia, the Government was in a state of denial and did not see the problem that was within Catalan society and if it had acted earlier it would not have had to apply the direct rule and it would have been enough to renegotiate a new Statute of Autonomy. One of the main reasons why the independence movement has taken root at a political level, especially, in relation with the political party that was part, at the time, of the Catalan Government, was the refusal by the central Government to negotiate a new Statute of Autonomy for Catalonia. Before the independence movement spread within the Catalan Government, which had traditionally been characterized by being conservative and monarchical, they had elaborated a new Statute of Autonomy in which Catalonia tried to assume new competences, mainly in Tax Office. In addition, the Catalan

Government also intended to provide the Public Treasury with a lower amount of money, and also wanted to be granted an economic concert, similar to that of the Basque Country. The denial of those competences, made the political party that was in charge of the Catalan Government enrol in the independence movement. If a package of proposals to improve the situation in Catalonia had been presented by the Government of Spain in time, the enforcement of article 155 would never have happened. And the victimisation of the Catalan leaders at the moment for the independence itself would have been rather more difficult.

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