

## DEMOCRACY IN SPAIN/2010

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### THE EROSION OF CONFIDENCE AND WELL-BEING

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# Against citizens' disaffection

A Grand Pact to combat public disaffection

The erosion of confidence and well-being

The political strategies of Government and opposition

Corruption: the bitter truth

The Catalan Statute and the Persian jurist

The state of Justice

Education and teaching in times of crisis

A democratic audit of foreign policy

Gender and economic inequality in Spain

Regional Media

The third measurement of democracy

Spanish Democracy qualification:

5,8

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- \* Regional Media**
- \* The third measurement of democracy**
- \* Statistical appendix**

**Spanish Democracy qualification: 5.8**

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This Report on the current state of Spanish democracy was realised by a committee of consultants appointed by the *Laboratorio de la Fundación Alternativas* who, together with the director, spent much time debating its structure and orientation, familiarizing themselves with the work-in-progress and agreeing the final manuscript.

The research and selection of material, the production of relevant data, and the initial editing of each chapter of the Report was undertaken by a team of investigators contracted by the *Laboratorio de la Fundación Alternativas*. The responsibility for the final text lies with the editorial committee.

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## PREFACE

This is the fourth edition of an annual report which focuses on the quality of our democracy and which has now gained a prominent position in the social debate on the issue of the improvement of our system. This year, the experience gained from previous editions and changes to the circumstances of Spanish political life has led us to focus attention not only on the major and recurrent themes of democratic theory but also on the more topical ones that add vitality to the experience of living in a democracy. As might be expected from a text of this nature, a broad panorama needs to be covered in order to examine the workings of the basic institutions of a democratic system - Government and opposition, political parties, Parliament, judiciary, media, etc - and to evaluate the behaviour of the main participants and analyse the adequacy of their response to social problems. Furthermore, in a year such as 2009, it was precisely these institutions which were affected by the omnipresence of the economic crisis, by the consequences of unemployment and economic uncertainty, by the extension of corruption, and by the rampant disaffection of the citizens – all of which figured prominently in the more recent opinion surveys. The main title of this year's IDE, *Against Disaffection*, expresses a rather worrying diagnosis regarding both the current state of affairs and the consequent need for a decisive political response.

In fact, a lot of the data presented in the 2010 Report and the analysis developed from it, whether of a economic, sociological, legal or political nature, points to the same conclusion: a deterioration in the level of public confidence in the institutions, and in those who are responsible for them. The worrying corollary of this is that there is evidence of a distancing on the part of Spaniards with respect to their representatives, a disturbing uneasiness regarding the future, and undoubtedly, a questioning of some of the hard-won principles and social values which have been constructed over recent years and which cannot be easily replaceable. This widespread uncertainty about the future and the absence of a clear and agreed political and economic response has resulted in a climate which is hardly auspicious

for a democratic system. And the scenario does not improve when the more widely-publicised responses to the crisis are vociferously criticised for their inadequacy by significant sectors of society. But nevertheless, it must be emphasised that there is no alternative to the institutions of our democratic system. This conviction, far from being an invocation to despair, compels us to make the best use of the existing possibilities in order to kick-start a reorientation of civic society: to survive the economic crisis, to share the necessary sacrifices and efforts, and for the political sphere to reclaim its sense of social responsibility; in short, it implies the rebuilding of confidence in our society, our citizens, and our politicians.

Short-sighted measures are not enough to save us from our present condition. The size, scope and duration of the economic crisis means that this is not the time for simple, short-term diagnoses, but rather a moment when it is essential to employ decisiveness and time and effort to redirect the fundamental characteristics of our growth pattern. Furthermore, regaining the political trust demanded by these important changes appears fraught with difficulties if the substance of political relations continues, almost without exception, to correspond to the basic paradigm of friend or foe; a paradigm, moreover, that is incompatible with the true nature of democracy in which political opponents and electoral competition are simultaneously ruled by a belief in shared constitutional values, and the same overriding common interests of a majority of the citizens.

This Report offers many proposals for improving the quality of democratic life and the rebuilding of confidence and trust. But a precondition to almost all these improvements requires what we have deliberately and loosely termed, with no additional adjectives, *A Grand Pact*. Undoubtedly, the politicians each have their share of responsibility for the course of events and the continuing decline of the assessment of the quality of our democratic system, illustrated by the audits carried out in successive editions of this annual report. In the last analysis, it is up to the public to apportion blame to either the Government or the opposition. At a time when there is clearly a need for a joint effort no-one can use facile excuses to

avoid their particular responsibilities..... But it is indisputable that the primary responsibility for the conduct of public affairs - the design of strategy, the formulation of objectives, and the adoption of appropriate measures - corresponds to the legitimately elected Government, which cannot elude the responsibilities for which it was, precisely, elected. Certainly, this acceptance of responsibility is one of the essential ingredients of a well-orientated policy *Against Disaffection*.

In conclusion, I wish to express my gratitude to the many authors who have contributed their ideas to this new edition of the Report on Democracy. They elaborated the original texts on which, after discussion by the editorial board, the final version of each chapter was based. I also would like to extend my own appreciation, and that of the *Laboratorio de la Fundación Alternativas*, to the members of the editorial board and the director of the Report, Joaquin Estefania, with whom I shared many hours of stimulating debate.

Juan Manuel Eguiagaray Ucelay

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# **CONTENTS**

## **Chapter 1**

### **A Grand Pact to combat public disaffection**

1. Introduction
2. Politics and economics
3. The costs of the recession
4. The responses
5. The deception of the PP
6. The Statute of Catalonia and the Persian Jurist
7. The judiciary remains in recession
8. Corruption and urban development
9. The role of the institutions

## **Chapter 2**

### **The erosion of confidence and well-being**

1. Introduction
2. The global setting
  - 2.1. Vulnerable recovery
  - 2.2. Persistence of credit rationing and bank regulation
3. The singularity of the Spanish recession
  - 3.1. Fall in activity and collapse of confidence
  - 3.2. The rise of unemployment at the start of the adverse spiral
  - 3.3. Limitations of the workings of the banking system
4. Evaluation of policies: measures to tackle the crisis

- 4.1. State Fund for Local Investment and the Plan 200E
  - 4.2. The State budget for 2010
  - 4.3. Pension reform and austerity until 2013
  - 4.4. Pacts for labour reform
  - 4.5. The draft bill of the LES (Law for a sustainable economy)
  5. The agenda for economic modernisation
- Conclusions

### **Chapter 3**

#### **The political strategies of the Government and the opposition**

1. Introduction
  2. Government response to the economic crisis
    - 2.1. Emergency measures to confront the crisis
    - 2.2. Changing the economic model
    - 2.3. Were Government measures to combat the crisis improvised?
  3. The opposition as an alternative
    - 3.1. The limits to the opposition's strategy
  4. The electoral consequences of Government and opposition strategies
    - 4.1. The relationship between the economy and political behaviour
    - 4.2. The electoral balance of 2009
- Conclusions

## **Chapter 4**

### **Corruption: the bitter truth**

1. Introduction
2. Accusations throughout Spain and perceptions of corruption
  - 2.1. The *Gürtel Case*
  - 2.2. The situation in the Balearic Islands
  - 2.3. The unexpected in Catalonia
3. Data on the perception of corruption
  - Conclusions
  - Bibliography

## **Chapter 5**

### **The Catalan Statute and the Persian jurist**

1. Introduction
2. Composite State, Integrated State, Federal State, Confederate State
3. The mechanics of approval
4. The return of the territorial issue
  - Conclusions

## **Chapter 6**

### **The state of Justice**

1. "Justice continues in recession"
  - 1.1. The CGPJ returns to its old ways
  - 1.2. Situation of the Constitutional Court: *nihil sub sole novum*

- 1.3. The reform of the judicial office
2. Corruption: a threat to the democratic rule of law
  - 2.1. Urban development and corruption
  - 2.2. Justice against corruption
3. The controversial tax shield of the “*foral regime*” regions

Conclusions

## **Chapter 7**

### **Education and teaching in times of crisis**

1. The current situation in the Spanish school system
2. The relationship between schools, the economy, politics and moral values
3. The effectiveness of educational policies
4. Citizenship education
5. The Catalan Education Act
6. The Education Agreement

Conclusions

Bibliography

## **Chapter 8**

### **A democratic audit of foreign policy**

1. Foreign policy as an factor of electoral damage
  - 1.1. Government strategy
  - 1.2. Opposition strategy

- 1.3. Polarisation instead of debate
  - 1.4. Three dimensions for evaluating Spanish foreign policy
  2. Consensus and vacillation
    - 2.1. Consensus
    - 2.2. Vacillation
    - 2.3. Our neighbours are no different
    - 2.4. The myth of national interests
  3. Legitimacy and democracy: evaluating the quality of foreign policy
    - 3.1. Wrapped in the flag
    - 3.2. The quality of democracy in foreign policy
    - 3.3. Efficiency and accountability: enlightened despotism
  4. Auditing foreign policy: results
    - 4.1. The democratic quality of foreign policy
    - 4.2. The effectiveness of foreign policy
    - 4.3. A consistent and ethical foreign policy
- Conclusions

## **Chapter 9**

### **Gender and economic inequality in Spain: the current situation with data from the survey of living standards**

1. Introduction
2. Methodological questions
3. Spanish income distribution 2004-2008
4. Gender and income distribution

4.1. The position of women in global income distribution

4.2. The situation of households headed by women

5. Individual income and inequality

6. Salaries and position in the labour market

Conclusions

Bibliography

## **Chapter 10**

### **Regional Media: a significant democratic deficit**

1. Introduction: regional media and integrated development

2. Spain: a centralised media structure

3. The press: subsidies and unregulated advertising

4. Regional Radio-TV: between positive decentralisation and permanent suspicion

5. The transition to digital: a new source of political 'cronyism'

Conclusions

Bibliography

## **Chapter 11**

### **The third measurement of democracy**

1. Introduction

2. General results

3. Area results

Conclusions

Appendix I: Methodological note

Appendix II: The questionnaire

Appendix III: List of participants allowing publication of their name

## **Chapter 12**

### **Statistical Appendix**

# 1

## A Grand Pact to combat public disaffection

- We demand an austerity programme to recover the dual path of sustainable growth and the elimination of unemployment.
- The depth of the crisis calls into question the democratic system and public perception about it.
- Spain needs a consensus of all political forces, including the regional autonomies, extending beyond the term of a single legislature.

### 1. INTRODUCTION

The economic situation in Spain at the end of 2009 was characterised by the following features: an unemployment rate of nearly 19% of its work-force; seven continuous quarters of negative growth; a deficit exceeding 11% of Gross Domestic Product (GDP), indebtedness (both public and private) of around 370% of GDP and, as a result of all this, a departure from the actual convergence with neighbouring countries which has been reflected in the impoverishment of our population. When the Report on Democracy in Spain appears in the bookshops the situation will not have changed all that much. These are the most explicit results of the global economic crisis which began in the summer of 2007, and which has had its specific counterpart in our country including, above all, the particularity of the brutal burst of the Spanish housing bubble. The specific difficulties that Spain has suffered have exacerbated the general crisis and fused with the problems of sustainability that were present in the Spanish economy prior to the Great Recession.

Spain is experiencing an economic situation which can only be described as exceptional. Today the economy is the main problem in Spain, and its improvement depends on many factors, including the general evolution of our democratic system. This has taken a very direct beating from the doubts that the public has about the quality of the policy response to the crisis in terms of effectiveness and burden-sharing. The depth of the crisis, its duration, its consequences, and the political response to it, has called into question the democratic system and public perceptions about it.

The most worrisome of these problems and the one most unique to Spain is the spectacular increase in unemployment – the highest of all countries belonging to the Organisation of Economic Cooperation and Development (OECD): one in five of the active population is unemployed, and in the case of under-twenty-fives the unemployment rate exceeds 40% - a situation which in normal times would be considered untenable. In the previous recession in the first half of the nineties, the Spanish unemployment rate reached 24.5%. Thirteen years later, in the second quarter of 2007, the rate was down to 7.95% (the lowest during the democratic era) and in line with the European average. These figures show that it took Spain 13 years to catch-up with European employment at a time when the average Spanish growth rate was over 3% of GDP. Although now the size and flexibility of the Spanish economy is different, the social agents more experienced, and Spanish companies more internationalised, it is not difficult to imagine that our country will have to make a similar effort over the next decade; and from all points of view this would appear to be too long a time to accept with resignation.

To avoid the possibility of this lost decade, the Report on Spanish Democracy proposes the need for a Grand Pact: an historical compromise between the most important political and social forces to agree on the essential initiatives to reorganise and reform the Spanish economy. The Pact would be underpinned by a common objective: the welfare of the population and the recovery of lost time. It would be a broad agreement between different forces and represent a majority of the citizens; and it

would be non-partisan. It would need to be a transversal agreement which would include the various territorial authorities (the central State, the autonomous regions, the municipalities), and would need to extend beyond the term of a single legislature for as long as was deemed necessary, irrespective of which party was in power. A shared austerity programme is necessary in order to regain the path of sustainable growth (the only way of generating jobs), as well as a reform policy which allowed the Spanish economy to recover its cruising speed once it returned to normality. The agreement would have to provide a coherent and appropriate response to the true magnitude of the effects and challenges of the current crisis. And at the same time avoid the risks mentioned by Indalecio Prieto in his book, *Convulsiones en España*: "The lack of a political understanding of the world economic crisis, and the lack of a politically consistent economic policy to confront it, was one of the causes of the failure of the Second Republic".

A government cannot stand in a general election with the abovementioned, or similar, macroeconomic variables and hope to win. The level of risk is too high. And the same applies to a responsible opposition if it has hopes of winning and forming a government without running the risk of a swift deterioration of political and social support due to the application of a policy of *rigor mortis* rather than a classic adjustment programme. It would be suicide. And yet this is what Spaniards fear will happen; and for the moment this is exactly what is happening. In fact, to date, few people think that the Government of Zapatero has made any extraordinary efforts to achieve this broad agreement, or that the PP has altered its stance. The dominant strategy appears to have been the attempt to destroy the other rather than to work together for the general welfare. On the other hand, with or without a pact, such an exceptional moment for any country calls for decisive leadership. A leadership that simply seeks to appeal to its own supporters in order to create unity is a short-sighted leadership; one that is incapable of taking an overall view and introducing tough but reasonable measures is not providing true leadership. This applies equally to Government as well as opposition.

## 2. Politics and economics

In the Report on Spanish Democracy 2009 it was explained that empirical evidence demonstrates that a Government does not automatically lose an election in a period of recession. Crises do not always favour the party in opposition, just as economic growth is no guarantee for remaining in power. This is because the outcome of the election is influenced by other factors such as, for example, the ideology of those who choose to vote as well as that of those who abstain from voting. Ideology determines the vote and at the same time conditions the way in which voters assess the economic situation. As Maravall and Przeworski observed “voters appear to choose to support the Government or the opposition for a variety of reasons, and then choose arguments to justify their decision”. Therefore, a causal relationship, whereby voters’ views on the economy decide their vote, has often worked in reverse. It all depends on how the crisis is managed, if decisions are taken, whether ability and decisiveness are shown; in short, on how policy is produced. For example, Felipe Gonzalez won the 1993 elections amid a deepening crisis and then lost in 1996 when the economy had recovered. Similar cases include Jacques Chirac’s defeat in France in 1988, the victory of Gerhard Schröder in Germany in 2002, the victory of John Major in the UK in 1992 and his subsequent defeat in 1997. All provide instances of defeat in times of economic expansion and victory in times of crisis.

However, the capacity of ideology to neutralise the effects of an economic crisis is probably limited, especially in a major recession such as the present one which is distinct from other by its nature, depth and duration, and by the consequences it has had on the population. Economists Kenneth Rogoff and Carmen M. Reinhart recently published a book of reference entitled precisely, “*This time it’s different: Eight centuries of financial folly*” in which they explain the idiosyncrasy of the current Great Recession and the likelihood of worsening political, economic and social consequences.

The attribution of responsibility for the crisis is a second factor which can distort the relationship between the economic and political dimensions.

While it is true that the origins of the crisis were beyond our borders, the crisis was made more complicated by the idiosyncrasies of a Spanish growth model based on the elevated presence of construction and tourism in overall GDP, and on a level of private consumption that led to high household indebtedness. For example, is it possible, given that the regions have extensive powers over economic behaviour, that the public will place some of the blame for the bursting of the housing bubble and its consequent problems on the regional authorities – irrespective of ideology? Regional economic policies were not neutral elements in the development of the crisis; indeed, regional strategies contributed to the hardening or softening of its effects.

Finally, there is at least a third factor that may distort a straight-forward allocation of votes according to the economic situation, and this factor is related to the credibility of the opposition: its capacity to formulate a workable alternative for resolving economic problems. On this topic the situation is not very encouraging for the Popular Party (PP) because during the year which is the focus of this report they have been unable – or have not considered it opportune – to present an appropriate programme for dealing with problems of public concern, and have opted instead to base their political strategy solely on undermining the Government.

Given the absence of an electoral campaign in 2009, the effects of the economic crisis on political competition have been mainly manifested in the content of the applied policies and the behaviour of the main contending parties (beyond those reflected in opinion surveys which have shown an increase in voting intentions in favour of the PP and a significant decline in socialist support). The economic crisis has forced the Government and the main opposition party to modify their previous plans and positions. The Government has had to turn from policies based primarily on the extension of rights for particular social groups to those which address the recession: from the granting of rights, to the implementation of economic and social measures. The idea that both priorities share is that of the decisive role of State intervention in the public sphere.

For its part, the PP has almost exclusively pursued a policy of counter-attack based on the idea that the magnitude of the effects of the recession on the public would be sufficient to undermine Government support. Initially, the PP accused the Government of denying the existence of the crisis when it was already evident; next, of improvising responses to it because of their lack of an adequate diagnosis; then, that the measures introduced were ineffective in spite of the huge amount of public funds employed to alleviate the consequences of unemployment; later still, of having developed an economic policy which was off-course which led the PP to demand a complete change of direction; and finally, and as a corollary, of not calling for an early election, which according to opinion polls would give the PP the necessary majority, to take over government and enable them to make up for lost time by putting in place the policies that were needed to bring the percentages - both those of unemployment and those of the disequilibrium in the public accounts - down to single figures.

But during the whole period, and at the same time as they were intensifying their criticism of the Government, Mariano Rajoy and his team concealed their own remedies for the crisis. The only explanation for this is that they had no formulas other than general pronouncements in favour of austerity, structural reform, and tax-cuts - which were left undefined for fear that even the mention of them would scare broad sectors of the population (precisely those who, theoretically, would be most prejudiced by them: civil servants, white-collar workers and the retired.....). As long as it commits no grave errors, the PP considers that power will end up in its hands in 2012 - or when elections are next called - due solely to the wear-and-tear of the crisis on the current Executive. Thus, the absence of a PP programme could be construed as a tactic. But to accede to the Government without showing your hand to the voters certainly constitutes democratic fraud.

We have already observed how difficult it is to establish a direct relationship between economic crisis and electoral results given the number of exceptions there are to the rule and some of the factors which condition the

choice of the electorate. In any case, it will be politics, and not the economy, that plays the decisive role in granting electoral victory to one of the two main parties when the election is eventually called. The future of the PSOE will depend on whether they can present an acceptable version of their crisis management to a majority of the electorate; this would entail recognising the seriousness of the problems, and that their prognoses do not clash – as has occurred to date – with the reality of the up-dated figures. For its part, if the PP continues with its undefined oppositional strategy and is not considered to be offering a viable alternative, despite its risky programmatic gamble its electoral possibilities will be reduced.

### **3. The costs of the recession**

The situation has hardly been favourable for those in government, although in recent months the international environment has been significantly better than in 2008. Spain entered the harshest period of the recession after some delay. Although in most neighbouring countries the worst time, the so-called 'devil's quarter', was the last quarter of 2008 when the fall in GDP and employment was greatest and the financial systems experienced the greatest solvency problems, in Spain this period occurred in the first quarter of 2009, but with a positive singularity which continues to exist: the Spanish financial system has barely needed any state intervention (the exception being the small savings bank of Castilla La Mancha) nor direct help with capitalisation, and has resolved matters relating to such problems as delayed repayments fairly smoothly, particularly those connected to the property market, households, and individuals. However, as the crisis continues there is a risk that this problem will emerge more strongly in the immediate future, especially if the problems of the smallest and more fragile in the sector, a segment of the *cajas de ahorros* (savings banks) are not dealt with and if the delay in the loan repayments of businesses and households are not corrected.

We have already mentioned unemployment and public deficit figures, but in addition the Executive have had to confront the phenomenon of the general

impoverishment of society. Such a high increase in unemployment inevitably means a decline in the disposable income of many families, and particularly in deteriorating welfare conditions for the lowest income groups. To the extent that recovery is delayed, the number of households with all members unemployed will increase, as well as the number of unemployed without entitlement to benefits, and ultimately, the number of Spaniards living below the poverty-line. One of the consequences of this will be the problem of reducing the gap of *per capita* income which has widened over the past two years compared with neighbouring countries. It is not surprising, therefore, that there is a simultaneous deterioration in the confidence indicators of families and a spectacular increase in the propensity to save motivated by the fear of even worse times to come (in 2009, the household and non-profit-making institutions savings-rate stood at 18.8% of disposable income, its highest annual rate since the series began in 2000).

The following figures illustrate some of the results of the crisis:

- More than four million unemployed, double the figure at the start of the Great Recession.

- More than a million people no longer receiving unemployment benefit (long-term unemployed).

- More than a million households where neither husband nor wife receive a salary.

- Nearly 400,000 unemployed receiving the '*paga escobar*' of 420€ which is made available when the right to unemployment benefit has run out (lasting six months, and recently extended by another six months).

- 1.5 million contributors have dropped-out of the Social Security system.

- Until 2007, the GDP annual growth rate stood close to 4% (in a growth cycle that lasted 14 years), but at the end of 2009 the economy had contracted by around 4%.

- According to the Annual Report of the Bank of Spain, the process of negative family wealth was as follows: the value of household financial assets fell by 12% in 2008, and the loss in the value of fixed assets stood at 8%; the total net wealth of households in 2008 (the financial and real estate

value minus debt) fell by 7% compared to 2007 (the figures for 2009 are not yet available but will exacerbate the trend).

- In 2008, family indebtedness peaked at 143% of disposable income – a figure unprecedented in economic history – and will probably be similar for 2009; in 1996 this figure was just over 43.3% which situated Spain below the European average.

- According to projections of the National Statistics Institute (INE), Spanish households will have been impoverished for the first time in fifteen years; the *per capita* income will be far below the level of the 15 oldest member countries of the EU; during 2008, according to *Eurostat*, Spain has fallen from 94.3% of the European average to 93.6%.

-In 2007, the public accounts had a budget surplus of over 2% and a public debt stock of 38% of GDP. At the end of 2009 the corresponding figures showed a public accounts deficit of 11.4%, and a 55% public debt over GDP. This signifies that the fiscal force for those two years has been almost 13 points of deficit and 17 points of debt.

#### **4. The responses**

In 2009, the President, Jose Luis Rodríguez Zapatero, carried out a Cabinet reshuffle in order to help address these problems. If his intention was to compose a Cabinet with a stronger political profile, with more pedagogic ability than the previous one, and a higher collective capacity to confront and solve the difficulties facing the country, then the result cannot be considered as very positive. Rather than a government with greater political authority, the result was a government more organically partisan, despite the implantation of some independent ministers who were not card-carrying members of the PSOE. The new Cabinet included the president of the socialist party, Manuel Chaves, the secretary general, Rodríguez Zapatero, and the secretary of party organisation, José Blanco. This new composition certainly muted possible disagreements within the party which because of the conjuncture of political crisis (unfavourable polls) and economic crisis (deep recession) had been a distinct probability.

In addition, the President of the Government personally took over the protagonist role in terms of economic policy, no doubt on the understanding that he was the socialist party's main asset. The limelight on him was so intense that a former minister of Felipe Gonzalez, echoing a fairly widely-held opinion, labelled the Cabinet ministers as mere 'secretaries' of the President of the Government. Throughout the year Zapatero adopted a typically social democratic policy of increased public spending – especially in the social sphere - in order to protect those most vulnerable to the consequences of the economic crisis. Only in 2010, when he was confronted head-on with the spectacular growth of the deficit and debt, which generated widespread distrust in the international markets (to be discussed below), did he start moving towards orthodox fiscal consolidation and concocted the beginnings of what, perhaps rather pompously, became known as the 'change to the productive model' by the drafting of the Law of Sustainable Economy (*LES*). Finally, and characteristically for the period under discussion, instead of choosing a communications strategy centred round the need for 'blood, sweat and tears' in the face of the rapidly deteriorating macroeconomic situation and living standards of most of the citizens, Zapatero attempted to instil confidence in the social agents and raise public hopes by talking about the speed of recovery ("pessimism does not create jobs"). It was a questionable and risky strategy and it could have worked if there had not been a dramatic and permanent gap between the perspectives of the Government and the on-going macroeconomic data.

The idea transmitted by the President and his Government that "the worst was over" and that Spain was about to embark on the road to recovery, meant that the declining rate of GDP and the rising unemployment rate were much more restrained at the year-end than at its beginning. But this macroeconomic perception coexisted with a lack of evidence that a brake had been put on the bleeding of jobs. Moreover, almost all private research services and institutions predicted that the rate of unemployment amongst the work-force had not yet reached its apex. In addition, the factor of comparison, which had been positive for the Executive at the beginning of

the crisis (because Spain entered this phase later than some of its neighbours), was now prejudicing the country; Spain was currently suffering the consequences and continuing to accumulate negative quarterly growth rates while the USA, France, Germany and Japan were already showing positive growth figures. This was caused fundamentally by the elevated weight of the construction sector in determining growth and job creation, and the extremely slow normalisation of lending activity which had led to the collapse of many small and medium-sized businesses in an economy characterised by very high private debt levels, almost all of which were channelled through the financial system.

Nevertheless, and amid the emergence of a double-digit deficit and the very rapid growth of public debt in early 2010, the Executive terminated the public phase of the stimulus package and introduced policies of fiscal consolidation. Its aim was to return to controlled public accounting, with a maximum deficit of 3% in 2013 in compliance with the Stability and Growth Pact (SGP) which is a requirement of Spain's membership of the Euro-zone. This policy change was reflected in the General State Budget for 2010.

The sudden change of economic policy caused two types of problems. The first related to a lack of information which explained the reasons for this brusque change of policy to the general public. The Government had abandoned its Keynesian discourse centred round replacing weak private investment with an injection of public investment to encourage growth together with the assurance that there were no limits on public funds to ensure social protection for those most affected by the crisis. This was now substituted by another discourse which announced that within a fixed time-limit Spain must return to the path of stability, and that the lending markets would punish the Spanish economy by denying it credit (or only at an exorbitant rate of interest) if this did not occur. Thus, Spain entered a phase of unexplained austerity and reform in areas such as labour and pensions, which appeared to the public as counter-reforms and limiting their previously hard-won rights; they felt that the goal-posts had been moved half-way through the game.

The second problem was the dilemma itself: what was the main problem: the huge number of unemployed or the mountainous level of deficit? The Government appeared to be dealing with two conflicting pressures, and presented it as such: the demands of the citizens (employment) or the demands of the market (deficit and public debt). Many of the contradictions in the statements of the President and his Government, which varied depending on the audience, had to do with this dilemma, which until recently continued without resolution.

The parliamentary debate on the General State Budget (*PGE*) for 2010 would have provided the best time and informational opportunity for the Government to clarify its intentions; and also to explain to the public that, while the public accounts deficit was very relevant, this factor was not the one that differentiated our economy from those of our neighbours (many major countries have a deficit similar to the Spanish one, and, moreover, have a much higher level of public debt), but that the real differentiating factor was the level of unemployment. Instead, the Government chose to submit a timid budget (in the words of some analysts) which was not so much directed towards recovery but rather towards conveying the idea that the fight against the deficit was to be the main focus of economic policy in 2010. The impression given was that much more priority was being awarded to re-directing the fiscal deficit than on guaranteeing economic recovery and a consequent reduction in unemployment. Public, and especially investment spending were to be reduced, including in areas which had up until then been considered essential for the diversification of the growth pattern. In addition, increases in the type of public investment that was considered necessary for the continuing modernisation of Spain were to be sacrificed. Furthermore, in contrast to what was happening in most advanced countries, various taxes were to be raised, including value added tax (*IVA*).

In short, Spain became one of the first countries to remove the majority of the government stimulus measures despite being one of the few still in recession. The parliamentary debate was hardly useful in explaining this

shift of direction. The political parties were vociferous in their blanket criticism of the Government measures, but with a notable absence of detailed argumentation. Not even the minority political groups that backed the Government *PGE* expressed the reasons for their support with any exactitude. The debate was neither informative nor convincing.

Compare this sterile exercise with, for example, the debate about the dilemma of public stimuli *versus* deficit control that has taken place in Great Britain, a country with similar economic imbalances to the Spanish, although with half its unemployment. In the first two months of 2010, twenty economists signed a letter printed in the *Sunday Times* newspaper demanding that the British Prime Minister, Gordon Brown, speed-up the correction to the budget deficit; Brown had announced that the time was still not ripe to cut public spending, benefits, or public investment because this would lead the UK into deeper recession: "The year 2010 must be a year of growth in order for economies to continue their advance. This is a period of recovery." A few days later, another group of sixty economists (Stiglitz, Solow, Skidelsky, Layard etc.) published two letters in the *Financial Times* newspaper in which they supported the idea of gradual, progressive cuts to the deficit arguing that while unemployment was still so high it would be counter-productive to reduce public spending beyond the cuts already planned for the fiscal year 2010-2011, equivalent to 1% of UK GDP; further reductions would not bring about an increase in private sector activity and might even put a brake on it. The authors of one of the letters reminded readers that history was littered with premature withdrawals of stimuli, such as occurred in the case of the USA in 1937 and Japan in 1997: "If the government spends less and saves more than anticipated, the most likely outcome is that it will not drive forward the recuperation". *The Economist* magazine summed-up the discussion, entitling one of its articles, "Lord, be prudent, but not yet".

The economic policy pursued in Spain over the last two years has been largely similar to that of most other countries. It was designed during the three meetings of the G20 (Washington, London, and Pittsburgh) summoned

to look for ways out of the Great Recession. However, Spanish policy has aroused a high level of distrust for various reasons; firstly, because on many occasions foreign markets made a 'totum revolutum' with the disparagingly-called PIGS group (Portugal, Italy, Greece and Spain): the problems of one were immediately assigned to them all, and the discovery that the Greek imbalances were considerably higher than previously admitted in their official figures casted suspicion on the others (with the concurrent doubts about their inability to pay their debts). Secondly, distrust centred on the fact that even if economic policy was heading in the right direction its actual application was not having the desired effect; that there had been no monitoring of the hundreds of measures taken during 2009 under the *Plan E*. What had been the effect of the 400€ rebate to 16 million Spanish taxpayers? What had happened to the announced regulation of the mortgage market to facilitate renegotiations on the repayment of housing loans? What had happened to the 600,000 state-subsidised housing units the legislature had committed itself to building? It would be especially useful to link the tax reforms announced in the *PGE-2010* to the spending measures introduced under *Plan E* for the amount of 28,553m€ (2.6% of GDP according to the information from the Economic Office of the Presidency), which included the elimination of tax on patrimony (1,800 million euro); the exemption of 400€ of personal income tax (6,400 million euro); reductions in income tax and the up-dating of the taxable rate (2,829 million euro); ending the rebate of 2,500€ for births (1,192 million); a reduction in corporation tax (3,000 million euro); a consolidating regime for VAT (3,000 million euro) and the change to a monthly system of VAT returns (6,000 billion). If, in addition to the above, one includes the virtual disappearance of the inheritance and gift tax in the regions, where is the consistency with the approved budgetary policy?

A third reason for the lack of confidence arose from the political conditions which the budgetary measures were subject to, and the subsequent austerity plan aimed at reducing public expenditure by 50,000 million euro and lowering the deficit by 8 points over four years (in order, as observed earlier, to remove the threat that the public bond markets, and their

mediators such as the risk-rating agencies, would condemn the Spanish economy in the same way as they had with the Greek one). There are doubts about the effectiveness of the measures, the over-lapping of one measure on top of another, the Government's ability to withstand popular pressure against the harshness of the adjustment plan, and Government vacillations according to public reaction. There is also a certain amount of distrust about possible voluntarism in the data sent to Brussels for the Stability Programme; few experts believe in the Government's estimates for economic growth capacity over the next two or three years. There are also doubts about the health of the Spanish financial system: while it is true that so far it has withstood the vicissitudes of the crisis, if the recession extends over any length of time the system will be faced with large volumes of delayed household and company payments, and the financial institutions already have risky loans to property developers amounting to approximately 350,000 million euro on their balance sheets.

Finally, in addition to the economic policy dilemma between unemployment and deficit, the Government had to confront another choice between what was urgent and what was necessary. The Law of Sustainable Economy (*LES*) aims to modernise the Spanish economy and change its growth model. According to the preface of the bill, it attempts to promote balanced and sustainable growth, business competitiveness, and a broad programme of reforms to improve the regulatory environment. Although the content of the law is clearly heterogeneous and has led some to speak of a veritable 'mixed bag' of measures, the intentions are laudable and defensible. It will not be worth anything however, if it fails in the short-term to slow-down the main imbalance of the Spanish economy: unemployment. This level of unemployment is the manifestation of the failure of an economy and a lack of ability on the part of its agents; without an improvement to the figures not only will the social welfare acquired during the boom years be squandered but we will be advancing towards a de-capitalisation of the most important economic factor: employment. Furthermore, the current crisis is also compromising the future growth potential of the Spanish economy. Potential GDP is being reduced hand-in-hand with the high rate of structural

unemployment and, very importantly, by the contraction in investment. The management of this crisis should be compatible with the prompt introduction of factors conducive to a diversification of the growth pattern of the Spanish economy. For this reason the *LES* should not be neglected, but it should not attract attention away from the crucial issues facing Spain now, and it should not undermine the confidence of the authorities to manage this very complicated moment.

## **5. The deception of the PP**

It is not possible to conclude these comments on how economic conditions are reflected in the political situation without mentioning the disappointing role of the main opposition party. For fifteen years, surveys of the *Centro de Investigaciones Sociológicas (CIS)* have shown that the public view the PP as more capable than the PSOE at managing the economy. Therefore, given the magnitude and duration of the economic problems, it would be expected that there would have been a huge shift in voting preference in favour of the politics and leaders of the right. But this has not been the case. It seems that so far the PP has been unable to maximise the benefit from the erosion of confidence experienced by the socialists. Why?

During 2009 the PP wasted much time on questions related to their internal organisation: disputes between the hawks and the doves, corruption scandals, and the almost continual questioning of the leadership of Mariano Rajoy (never has a leader of the opposition been so poorly rated in the polls - including by his own voters who rate him extremely badly). A section of the party wanted to continue the strategy of tension employed during the previous legislature and whose main exponent had been the president of the Madrid regional government, Esperanza Aguirre. But Rajoy and his team had opted for a less strident opposition, focusing on exploiting the problems and contradictions of the Government, without, however, ever presenting an alternative economic programme. The leaders of the party appear to have understood that the strategy of *crispación* was insufficient for wresting electoral victory from the PSOE, and that if they won an election they would

encounter great difficulties in finding political allies to support them in government. They could neither win nor govern.

The cases of corruption which have most tarnished the image of the PP have taken place in two of its strongest bastions: Valencia and Madrid. The corruption in these two regions include the *Gürtel Case* (which is extensively analysed in the corresponding chapter of this Report); the appearance of a spy network operating against their own militants (one group of PP members spying on another group); and a major and direct intervention in the fourth largest Spanish financial institution, *CajaMadrid*. As a result of these events the PP adopted a code of good conduct to combat corruption, and created the post of an internal auditor (the former minister, Romay Beccaria, who was later appointed treasurer of the party after the resignation of the previous treasurer, Luis Barcenas, who was beset by evidence of corruption in the *Gürtel Case*). So far nothing is known of this code.

The PP has made changes in two regions where the local leadership was generating unpopularity. In Catalonia, Alicia Sánchez Camacho has been put in charge of the regional branch of the party - signifying yet another change in the leadership of the Catalan PP - and she will receive the verdict of the voters in the next regional elections in the autumn of 2010. In the Basque Country, Antonio Basagoiti has been appointed leader, and has won the backing of the 'lost' centre-voters with his strategy of support for the minority regional government of the socialist, Patxi Lopez.

## **6. The Statute of Catalonia and the Persian jurist**

Even though the economy took up so much time, it was not the only item on the political agenda during 2009. Attention was also focused on the long-awaited ruling on the constitutional appeal lodged by the PP in July 2006 relating to the new Statute of Catalonia of the same year. For almost four years, with no verdict being reached by the *Tribunal Constitucional (TC)* on the appeal, the media has been rife with debate on the issue, and politicians have been developing their positions on the future pronouncement of the

Constitutional Court. The intensity of the passion aroused by this dispute is surely a sign that the solution given by the constituents in 1978 to the territorial issue, first raised in Spain in the late nineteenth century, was not altogether satisfactory.

The final text of the new Statute of Catalonia, which modifies fundamental aspects of the original draft proposed by the Catalan parliament, was approved by 55% of the members of the State Parliament and 51% of the Senators. The subsequent referendum on ratification held in Catalonia registered a 49% level of participation and was approved by 73% of those who voted. The final text was a disappointment for the Catalans, and did not alter one iota the apocalyptic view of the PP who had challenged the constitutionality of no less than 144 Articles of the text, putting much emphasis on the irreparable consequences it could have on the unity of Spain and the Spanish State.

The internal divisions within the Constitutional Court and the constitutional difficulties in reaching an internal consensus on the appeals of the PP have their origins in the Constitution of 1978 and the contentiousness of the positions on the territorial articulation of the democratic State held by the successors of the ultra-centrists institutions of the Franco era during its drafting. The lengthy deliberations of the TC indicate, to some extent, a return to the territorial issue. This has been a crucial problem for Spanish democracy, but was thought to have been at least partially solved. But now the issue has re-surfaced. Pedro Cruz Villalón, former president of the Constitutional Court (TC), invented the figure of a confused Persian lawyer who arrives in Spain, studies the Constitution, and concludes that Spain had a basically '*desconstitucionalizado*' State structure which permitted a centralised and united State but, simultaneously, a different form of union with a de-centralised State: one more-or-less federal State, and another bordering on a confederate State. Over thirty years later these uncertainties are still unresolved and, furthermore, new ones have emerged since the start of the second cycle of statutory renewal and the passage of the Catalan Statute.

During the long wait for the Court ruling it has become clear that the tremendous transformations that have taken place in Spain regarding the construction and functioning of the autonomous regions since the 1978 Constitution was approved have failed to curb the complexity of the current territorial problems, both in terms of the present constitutional moment and historic expectations. A new political reality, shaped by different factors, has consolidated the equalisation of powers and institutions between the regions and these co-exist with the affirmation of the various regional differences which are protected by the Constitution. Although the regions share a legal and organisational similarity, they are all capable of initiating their own policies, social preferences, and possessing very distinct symbols of regional identity. This complex State, although materially federal, carries a high risk of potential instability. The centrifugal logic of coordination and homogeneity - necessary for the functional requirements of a complex modern State - contrasts with the differentiated social aspirations and need for symbolic political affirmation. Consequently, fundamentally similar federal impulses add their weight to the specific orientations and differences contributed by the nationalisms from the point of view of their historical origins.

The absence of a sufficiently generalised design, coupled with remarkable opportunism across the whole political spectrum, has revived some of the more potentially conflictive fundamentalist visions of regional projects. The provisional result of this is a broad degree of public disaffection, a certain amount of deterioration in social relations, and some damage to the constitutional institutions. For these reasons, the Constitutional Court's ruling on the Catalan statute is indispensable. Once the balance of victories and defeats contained in the Court's judgement has been dissected and the tears have been wiped, the ruling will play an important role in the task of designing a shared territorial future for Spain. Although each of these two currents want, at any price, to eliminate any analytical doubts in the mind of

the aforementioned Persian jurist, it might be more reasonable to allow him to remain confused.

## **7. The judiciary remains in recession**

The examination of what has occurred over the Constitutional appeal against the Statute of Catalonia leads us to a résumé of the situation of justice in Spain - another of the central issues addressed in this Report. This long wait for the TC's ruling and another year's delay in the renewal of one third of the members of the High Court can only be described as frustrating. This latter situation fosters the belief that, openly contrary to constitutional provision, the appointments will coincide with the partial renewal of appointments to the Parliament and the Senate.

A panoramic view of the judiciary in the year under examination does not substantially improve the diagnosis made the previous year. So we have developed an economic analogy, entitling this section "Justice remains in recession". There has been a new strike by judges and magistrates, and once again the General Council of the Judiciary (*CGPJ*) has given clear signs of blockage, ineffectiveness and internal tension and, in addition, complaints have been made about the political 'sharing-out', or '*pasteleo*' (dividing of the cake), supposedly surrounding judicial appointments to the *CGPJ*. Moreover, the climate has been further strained by the various complaints (of graft and bribery) that have been accumulating in the Criminal Division of the Supreme Court against Baltasar Garzón, the magistrate in charge of the No. 5 Court of Instruction of the *Audiencia Nacional* and certainly the most famous judge within and beyond the borders of Spain.

On the positive side, it is worth mentioning the approval of the Procedural Law Reform facilitating the introduction of the new judicial office which is designed to give an impetus to the urgent modernisation of Spanish Justice.

## **8. Corruption and urban development**

The response of the judiciary to the cases of corruption which have come to light during the year has demonstrated the inadequacy of the legal system to deal with this issue. The recent evolution of Spanish urban development has revealed the extent to which corruption can pervert public policy – an area where common interest should surely prevail. Corruption is being fought with an out-dated legal instrument, designed, in many cases, for a rural and low-tech society, and which neither serves to cope with all the consequences of organised crime nor to tackle the greed of those holding influential positions. Unfortunately Spanish corruption occupies, as it has done in the past, another important chapter of the 2010 Report. As noted earlier, it is closely linked with urban development and public procurement. Above all, corruption in Spain is political rather than bureaucratic, and the phenomenon has extended to town councils and to some regional governments. With high-level political corruption (eg. the *Gürtel* and the *Matas* cases) there is often a causal element - such as the need for party funds - which, in turn, has its origins in functional changes: the need to remain permanently in the public eye and the day-to-day running expenses of a party generate a financial demand which appears to be limitless. Another cause of corruption is the gradual separation between power and politics in today's world and this has led to an ever-increasing presence of private business in politics.

One of the most influential, cost-effective, and damaging forms of corruption is that of '*the usurpation of policy*' which happens when large interest groups take control over areas of policy within a State in such a way that the Government cannot and often does not want to formulate regional policies in that particular ambit. Urban development policy in Spain has been until recently an example of policy '*usurpation*' by landowners.

An appropriate institutional re-design may help to redress these problems. For example, changes in the regulation of party funding that introduced greater limits on election expenses and more transparency, greater political

independence for the body responsible for managing conflicts of interest and the incompatibilities of politicians, a meritocratic civil service with a rigorous evaluation of performance, greater regulatory capacity for the State (which does not imply more regulation, rather less and better), and so forth. Events, however, have overtaken pure, technical analysis and Spain has ended-up with a crisis situation within the institutions. It is neither the first time that serious corruption scandals have been uncovered involving political parties, and nor does it appear that the reactions of those in positions of responsibility will stretch beyond an opportunistic political utilisation of the facts, without any proposals for a change in conduct.

## **9. The role of the institutions**

Political-institutional factors influence the adoption of collective decisions. The political institutions aggregate individual preferences and play a crucial role in the resolution of conflicts. A characteristic of almost all the surveys, and of the rating of Spanish democracy that has been carried out for the third year running for this report based on the methodology developed at the University of Essex, is the very negative opinion that interviewees have on the ability of our democratic system to resolve the economic crisis and various other social problems, and which has led to a questioning of the quality of our present democracy. Many institutions appeared weakened at the very moment when they are more essential than ever for revitalising public life and confronting the economic crisis. Crises multiply the insecurities of the citizenry, and thus demand that the institutions play a more significant role. History demonstrates that whenever there is an extreme crisis citizens rediscover the need for effective institutions, the need for good governance, the importance of the collective, the significance of efficient public services and regulatory bodies, the centrality of an effective welfare state, etc.... Uncertainty is reduced when the regulatory framework and institutions function well, transactional costs are lessened, and social cohesion is made easier.

The democratic audit, which the Report has carried out for the third consecutive year, attempts to evaluate the quality of democracy in Spain according to two basic principles: political equality, and social control defined as the right of citizens to influence policy decisions. The results show that, in this sense, the quality of democracy in our country has declined by almost half a point in two years (6.2 out of 10 in 2008 to 5.8 in 2010). This drop corresponds in time to Zapatero's second term of office and the start of the Great Recession.

Although almost all the indicators illustrate the same trend, we would like to focus attention on two in particular: firstly, the negative assessment of the democratic system's ability to solve the economic crisis. Each year the perception that the Government possesses the autonomy to develop its policies without interference from big business diminishes, and confidence in Government action to solve the main problems facing the public has declined sharply. And the second trend refers to the extent of political corruption: a theme which transverses much of the Report and which is an increasingly central issue for democracy, in addition to being a problem that has increased in local governments and some regional ones. The most notorious example in 2009, but by no means the only one, has been the *Gürtel Case* which has mainly affected members and militants of the PP, and has had its latest ramifications (for now) in the field of justice due to the complaint lodged against the judge in the case, Baltasar Garzón, in order to nullify the evidence obtained by tapping the telephones of the lawyers who may have been acting as go-betweens for some of the accused.

The media also played a negative role in the measurement of democracy. The experts' responses indicated that the economic crisis has negatively affected the quality of the media in areas such as plurality of information and the explicit relationship between the business interests of the media groups and the political actors. These findings are complemented by the chapter that examines the link between the media sector and regional power. This text suggests that although nationwide groups dominate the regional media they often vary their editorial position according to the region in which they

are operating and the party in power there. This creates a climate in which competition and profit are, in part, linked to political power - and not merely the market - by the existence of financial aid, favours, and concessions (advertising, licences, subscriptions, etc) awarded by the government of the day. For the year 2009 the editorial board of the Report on Spanish Democracy decided to incorporate three new themes into the Report in view of their bearing on Spanish public life: that of education, on which an agreement is being sought, although it will be difficult to achieve; the area of foreign policy where the Government has yet to establish consensus between the various political parties (except for matters related to the Presidency of the European Union); and the theme of gender equality in Spain. The latter continues the line of study introduced last year on the distribution of income and wealth as a determinant element in the quality of democratic life in Spain.

The chapter on education focuses on educational content in Spain and the possibilities of a national pact on the subject. This proposal was presented by Ángel Gabilondo shortly after he was appointed minister during Easter week of 2009. It takes as its point of reference the habitual diagnosis of the faults in this sector: the Spanish education results compared with international ratings, the scholastic drop-out rate, etc. The proposal accepts that there are serious difficulties in believing that political parties might renounce part of their programmes for the sake of the common interest, but is confident that much progress could be made in overcoming the substantive differences if this common interest were to be put before the various political interests. The editors of this Report believe that it would not be so difficult to combine all the preferences on matters of principle; that it should be possible to accept that not all school activities is pleasurable in order to reconcile the idea of 'active' schooling with the ethos of hard-work; that if questions of primacy were left aside, it should be relatively easy to agree that both parents and State have the right to educate; that the conception of education as a public services exists and has been encapsulated within the Organic Law of the Right to Education (*LODE*) since 1984, and that the agreements with private educational establishments have

not caused any further problems to those which occurred between the private schools and the various regional governments at the planning stage; that the secular character of public or publically-funded education is juxtaposed with no apparent contradictions in at least two regional laws (in Andalusia and Catalonia) with the recognition of the familial right to religious education; that the culture of evaluation is very well-covered (of students by teachers, teachers by inspectors, pupils and school by sample testing – two of which are prescribed in the *Ley Orgánica de la Educación 2006: LOE*), and that therefore the dispute boils down to the amount of publicity which should be given to the results: an issue in which dogmatism gives way to pragmatism when it comes to actual experience, and so forth. In order for a pact to be achievable many of the issues which come under the authority of the regional governments will have to be left pending. These may include school autonomy, and external evaluations and incentives for schools and teachers because even though they occupy an important position in the proposals of the PP they are issues which would be difficult to reach agreement on at a national level.

One of the peculiarities of Spanish public life is that foreign policy is the subject of political strife and partisan debate. In most neighbouring countries foreign policy forms part of State policy and is not used to undermine the current Government, nor does it vary to any great extent according to the party in power. 2009 provided no change to the usual Spanish custom, and except for a precarious consensus relating to the Spanish EU presidency, foreign policy was used both by the opposition to create problems for the Government, and by the Government to reinforce the ideological identification of their supporters with their own policies. In general, Zapatero's foreign policy has received the support of the public, but there are three issues on which there is division: Turkish entry to the EU; Spanish military presence in Afghanistan; and Cuba, where even amongst the left there is a clear majority in favour of maintaining or increasing pressure on the Castro regime. In relation to the effectiveness of foreign policy it is possible to identify problems in the areas of planning, implementation and coordination. Despite electoral promises, the PSOE has not set in motion all

the necessary reforms of the diplomatic service, although they have opened new embassies and consulates in African and Asian countries that previously had not received much attention.

Finally, the IDE 2010 has continued its study on the general indicators of inequality and poverty introduced in last year's report. This year its specific purpose has been to review the situation of women. First conclusions have not indicated any remarkable differences between men and women in the home: the results were only slightly unfavourable to women. However, the situation changes if attention is focused on households where women are the main bread-winners. The break-down by gender of the principal bread-winner shows marked differences, which tend to increase sharply after the age of retirement. Only three in ten households are supported by women, who are most often widowed, separated or divorced. Despite the advances that have been made in the field of formal equality and in the general recognition of the role of women in society, these results highlight the persistence of significant employment and income inequalities.

If a single theme were chosen to summarise the contents of IDE-2010 it would have to be the concern prompted by the growing public disaffection with respect to the problems that afflict our country: the economic crisis and the responses to it, the extent of corruption, the difficulties of de-politicising the judicial system, the importance of an inter-party agreement on education, etc. In a recent newspaper statement, Ivan Krastov, a political scientist and founder of the European Council of Foreign Relations summed-up the situation in the following way: "We are witnessing a collapse of confidence in political and business elites (...). Elections are losing their significance as a choice between alternatives and are becoming a procession of elites. Thus, democracy is no longer a matter of trust but rather a matter of managing the distrust".

# 2 THE EROSION OF CONFIDENCE AND WELL-BEING

## 1. Introduction

In the chapter on the economy in the Report on Spanish Democracy, 2009 an analysis was made of the risks facing the Spanish economy as a result of the sharp fall in GDP growth rate which is closely associated with rising unemployment, and the inevitable and continuing erosion of the quality of banking system assets. It was this combination which provided a warning of the approaching depressive front looming on the horizon of the Spanish economy.

A year later, the available data does not allow us to anticipate an immediate recovery from the situation described above. Unlike other economies of the Organisation of Economic Cooperation and Development (OECD) and the euro-zone, the Spanish economy bade farewell to 2009 with a contraction in the quarterly growth rate and with unemployment figures continuing their upward trend into 2010 – albeit with less intensity than in previous quarters.

The international environment was significantly more favourable than it had been the previous year. At the end of the world-wide recession government action had become essential. Economic policies were not the determining factors of the financial crisis, but they have been crucial in protecting the global economy from the worst evils of it. The majority of governments, far from being the problem, have proved themselves to be the solution to a undoubtedly unprecedented crisis by their adoption of exceptional economic policies, and by their attempts to coordinate international measures via multilateral platforms such as the International Monetary Fund (IMF) and, more visibly, the G20.

This chapter of the Report proposes to examine the most significant changes to the global economic environment which have affected Spain and its agents. The combined behaviour of these players is, effectively, the core of the comments which follow. Together with this diagnosis of the Spanish economy, we will attempt to assess the practices and policies of the authorities in charge of managing the financial crisis and the economy. This latter aspect permeates the whole of the Report on Spanish Democracy and should be differentiated from a short-term economic analysis. The study is also an attempt to encourage a debate around this topic which, far from widening differences, will lead to the broad political consensus which an increasing number of citizens are clamouring for.

## **2. The Global Setting**

### **2.1. Vulnerable recovery**

In the second quarter of 2009 the global economy was delivered from the only recession it had experienced since the ending of the Second World War. The recession was in large part determined by the exceptional simultaneity of the same situation occurring in all the OECD countries, as illustrated in Graph 1. The exit from recession was a result of the positive growth rates of GDP in the largest of the OECD countries (USA, Japan, Germany and France), and also a result of the recuperative energy of China that, after a dip, returned to the exceptionally high average growth rates of around 10% which had characterised the Chinese economy during the last decade. In all these cases, the stimulating action of governments – in some instances with a degree of international coordination – was decisive.

After five consecutive quarters of contraction in the GDP growth rate, the third quarter figures of 2009 formally served to confirm the end of the recession in the euro-zone: they recorded a 0.5% rise over the previous quarter when they had fallen by 0.2%. That third quarter figures also served to publicise the fact of a moderate recovery. With this recovery the unique

threats associated with the collapse of industrial production and global trade (Graph 2) - and the disaster that that implied - were overcome.

The driving force of the major European economy was vital to the economic rebound. Together with Germany, France also registered a second consecutive quarter of growth; then Italy, Holland and Austria began to record positive growth rates too. Amongst the stragglers were Spain, Greece and Cyprus. In these latter countries, but also in Italy and Great Britain, some incipient tension could be detected in the public debt market after the disturbances generated by Dubai and Greece. In the majority of countries there was a time-delay between economic recuperation and an improvement in employment: Europe ended the year with the highest unemployment rate of the last decade – 10%. This figure was the same in the USA where unemployment had doubled in less than two years.

This recovery process would not have been possible without the exceptional contribution made by governments. Their action included support of the banking system and the use of the public budget to offset the collapse in aggregate demand. The unprecedented level of stimulus packages in the US, China, and Japan, and the determination of the German authorities to prevent unemployment through employment subsidies were responsible for the recovery from global recession. However, some of the vulnerabilities of the recovery being experienced in the first weeks of 2010 came about because of the unprecedented role played by governments.

In the first place, there is fear that the withdrawing of these stimulus packages will not be fully compensated for by private business activity. Secondly, that one of the more explicit consequences of this public activity is the - again unprecedented - deterioration of public finances throughout the advanced economies.

No-one questioned, however, the need for government action in order to compensate for the manifest inhibitions of the private sector to take spending decisions, and which had led to the beginning of the financial crisis

in the US in the summer of 2007. Even at the end of 2009, with the first indications of recovery in the major economies, the debate revolved around whether the provision of additional incentives should strictly abide to the Keynesian theory of increasing public spending, or whether it could be achieved by reducing direct taxes. This discussion was well-illustrated in the USA in December by the decision of the Obama administration to introduce a second round of stimulus measures to combat the still very worrying levels of unemployment that stood at just over 10% of the population and were the highest since 1983.

### **Graph 1**

#### **Proportion of OECD economies that experienced at least two consecutive quarters of decline**

*The last observation is for the fourth quarter of 2008*

*Source: OECD*

The weak contribution of the banking system and the dependence on public support to aggregate demand gave credibility to the forecasts of moderate recovery, even to those who had not ruled out a double-dip in areas with low or negative growth. It was also accepted that the global recovery would progress at very different speeds, which has been particularly true in Europe. The IMF upwardly revised its growth forecast for the overall global economy to 4% in 2010, with the emerging Asian economies once again taking the lead in this expansion. The IMF warned that the recovery in the advanced economies would be sensitive to the degree of continuing support that governments' gave to demand-stimulating policies. The withdrawal of these exceptional stimulus packages, their pace and intensity, was the main factor in identifying the solidity of the return to economic expansion in the OECD countries.

## **Graph 2**

### **Global GDP Growth**

Advanced economies

World

Emerging and developing economies

% annualised quarterly

Provisional

*Source: IMF*

## **2.2 Persistence of credit rationing and bank regulation**

The perceived fragility of the global recovery was also due to the insufficient standardisation of banking system activity in the advanced countries. The President of the USA was correct on December 4<sup>th</sup> 2009 when he rebuked the banking system in his country and particularly the large institutions who were maintaining a strict limit on investment loans. “Part of our message is this: the taxpayers have been there to bail you out; now that we are suffering the worst of the problems which you have caused, you have the responsibility to be there for the community”. The demand to put an end to the ‘era of irresponsibility’ was totally justified.

It is equally logical that to neutralise the potential for irresponsible actions tougher regulations on financial activity are required including, naturally, on banking. Banking systems are essential for modern economies. But they often fail. And the consequences of their mistakes are paid for by the taxpayers through higher rates of unemployment and falls in welfare.

This improved, although not necessarily greater, regulation will not only deal with the sensitive area of bankers’ bonuses, but will also address the need for adequate levels of capital for those operating in the markets and the

issue of protection for the consumers of financial services. One fact is certainly true: as a result of this crisis the vagaries of self-regulation in the industry have been rejected, and the public and the authorities are now even less willing to relax controls over a sector with such a huge potential to cause instability.

The US administration was the first to take the necessary decisions on the following two issues: the amount of compensation to be paid by the financial companies in return for the taxpayers' shouldering the brunt of direct costs; and the adoption of regulations aimed at avoiding a repetition of the current crisis. The first of these proposals is orientated towards a rate of 0.15% to be levied on uninsured bank liabilities until \$100,000m is recovered – approximately the net cost to the American Treasury of the bank bail-out. The regulatory decisions announced in January 2010 sought a limit on banks' risk exposure as well as a limit on their maximum lending. These are reasonable guidelines which in no way limit the competitiveness of the banking system nor the no less important efficiency necessary to enable them to function satisfactorily in the real economy.

Other countries were able to introduce more interventionist proposals. Such was the case in the UK with Gordon Brown's proposal (taken-up by Sarkozy and Merkel with their own variants on the idea) to create a fund for bank bailouts by charging a fee on the turnover of all financial transactions, renewing to a certain extent a proposal made in the seventies by Nobel prize-winner, James Tobin, related to transactions in foreign exchange markets. This reflected the attitude towards the activity of financial operators, summarised by the British Prime Minister when he said, "It cannot be acceptable that the benefits of success in this sector are appropriated by a few while their mistakes are paid for by all of us". It goes without saying that the viability of proposals such as those described above requires an adequate measure of international coordination; this is essential for any attempt to regulate financial activity in the present context of increasingly integrated financial markets.

The current crisis has illustrated that this is all the more necessary when the ability of advanced economies to ensure global economic growth and to manage their own crises is limited. Although in the sixth decade of the 20<sup>th</sup> century, the advanced economies represented 75% of global productive capacity, its share is now reduced to 55%. It is longer true that only the cycles of the major economies turn the wheels of the world economy.

At the same time, this crisis – given the speed and intensity with which it spread – has eloquently shown the real economic and financial integration that governs the workings of the global economy via the trade in goods and services and the flow of capital. The role played by the G20 in the search for solutions to the crisis has been an indirect demonstration of the need for a shared global management of the world economy. This gradual dilution of the simple hegemonies will be an increasingly common characteristic of the new, post-crisis world economy.

### **3. The singularity of the Spanish recession**

At the end of 2009, the view that the worst of the crisis had been overcome in Spain meant that the pace of decline in GDP and the rise of unemployment were much more moderate. But there was no evidence of a staunch to the haemorrhaging of jobs. If there had been such evidence, the Government would have announced the end of that particular phase of voluntary stimulation via public aid in their State budget proposals. The simple play of automatic stabilisers was acting as a force to increase public deficit to an almost unprecedented level, reaching 11.4% at the end of the year.

On the eve of Spain's term of presidency of the EU, the country's long period of uninterrupted growth – much of it at a rate significantly above the European average – now seemed to belong to the distant past. It was at this moment, however, that Spain needed to appear strong before the other European governments whose economies were registering better performances. Two areas will receive particular scrutiny in this part of the

Report: the adverse evolution of the labour market, and the continuing restraints on the functioning of the banking sector.

### **3.1. Fall in activity and collapse of confidence**

The evidence of the recession had already been sufficiently obvious during the previous year, but it was in the first quarter of 2009 when the contraction of GDP was most intense. As the year progressed the contraction of the quarterly rates of the Spanish GDP somewhat lessened, but the records for the whole year endorsed the view that this would be the most severe recession during the history of Spanish democracy. The Bank of Spain's estimates for the fourth quarter predicted a contraction in GDP of 0.1% over the previous quarter (an inter-year drop of 3.1%) placing the overall fall for the year at 3.6%.

The unemployment rate continued to rise, with the exception of a brief period due to the impact of increased public investment in municipal projects, and this accentuated the adverse distinction, explicit from the beginning of the crisis, between Spain and the other OECD countries. At the end of 2009, the Spanish unemployment rate was almost twice the European average.

The bluntness of these indicators – the most subjective expression of the confidence of families and businesses – damned any hope for a swift improvement to the scenario of stagnation and high unemployment that ushered in the year of 2010. It was widely assumed that the pace of economic recovery would be slower in the Spanish economy than in the majority of European economies.

As the previous edition of IDE (2009) suggested, the fundamental explanation for this delay was the relatively high importance of the construction sector in the determination of economic growth and employment during a good part of the long expansive phase of the Spanish

economy. In addition, the slow normalisation of lending activity, common to many advanced economies, was particularly adverse in an economy with very high levels of private indebtedness which were channelled almost entirely through the domestic banking system.

This credit rationing not only severely limited the possibilities of re-financing company debt, but also impeded the regeneration of business: the birth of new companies capable of realising those necessary counterbalances that anticipate the Schumpeterian models of growth following periods of recession. In fact, the Spanish business mortality rate, together with the collapse of investment ventures, made it impossible for risks to be taken without a significant loss of potential growth and, undoubtedly, declines in welfare and *per capita* income. This meant that Spain would regress, in terms of the general objectives for European convergence in place since Spain joined the EU, to a period various years prior to the onset of the crisis.

### **Graph 3**

#### **Evolution of Spanish GDP (%)**

Quarterly rate (left)

Inter-annual rate (right)

*Source: AFI from INE (Instituto Nacional de Empleo) data.*

### **Graph 4**

#### **Spanish economy: Current Account Deficit**

Investment rate

Companies

Public Administrations

Savings rate

Household

Financial institutions

Savings and investment rate in Spain

(% of GDP)

Total national investment

Cap/nec per institutional sector of financing (1,000m€)

Total national investment: 284,185m€

*Source: AFI from INE (Instituto Nacional de Empleo) data.*

### **3.2 The rise of unemployment at the start of the adverse spiral**

At the beginning of 2010 the most characteristic trait of the Spanish recession continued to be unemployment which corresponded to the highest rate in the EU and the OECD. In 2009, Spain suffered the fastest job losses in recent decades and in the whole of Europe. The Labour Force Survey (LFS) figures left little margin for hope: the number of unemployed grew by 1,118,600, reaching a historic maximum of 4,326,500, equivalent to 18.83% of the active population and the highest level since 1998.

When the still-distant recuperation of economic growth begins, the unemployment rate will have risen to 20%, and will be double that amongst the under-25s, and will be 20 points higher than the European average. Households with all members unemployed at the end of the year exceeded 1.220,000, slightly more than 7% of the total. At the same time, the number of families in which all members are employed, according to the LFS, was 9,408,400.

#### **Graph 5**

#### **Spanish economy: Unemployment**

EU

Spain

% of Unemployment rate

Sourc: *Eurostat*

Since the start of this severe crisis, the excessive involvement of the residential construction sector in the determination of growth during the boom period has caused the most rapid and intense destruction of jobs: 900,000 jobs have been destroyed, half of them since the end of 2007. Although the characteristic of temporality is not exclusive to employment in residential construction, it is a fact that in this sector a very large majority of the work has always been temporary, and subject to contracts containing very little compensation in the case of dismissal.

The temporary nature of work is the main cause of the contractual duality that characterises the Spanish labour market. It differentiates between those with indefinite contracts enjoying relatively high redundancy payments, and those with very precarious temporary contracts. During the highest period of growth in the Spanish economy and the lowest unemployment rates, workers on temporary contracts represented almost one third of the total. One of the adverse effects of this feature of the Spanish labour market is the difficulty of reconciling this factor with investment in in-house training programmes and other means that contribute to productivity closely associated with the commitment to maintaining employment - the ultimate basis of strengthening the human capital stock of any economy. There is already enough evidence of the relationship between the excessive temporality and the equally outstanding low rate of productivity in the Spanish economy.

Irrespective of the specific gravity of the residential construction in helping to explain the exceptional surge in unemployment (in which the vast majority of losses occurred in jobs with temporary contracts), the Spanish economy suffered a destruction of jobs at a higher rate than that which would be expected from the decline in the growth of domestic production of goods and services. What happened in this recession has confirmed the evidence that our economy creates more jobs in its expansive phases, but also destroys more in periods of recession. In addition to the explanation of job loss based on the role played by the residential construction sector it is necessary to include particular features of the Spanish labour market, some of which are the subject of the reform proposals announced earlier this year.

One of the most immediate effects of the rise in unemployment and the associated decline in the disposable income of households is the deterioration of welfare conditions, especially for families on low incomes that form part of the group of employees with the most precarious job contracts and the first, therefore, to be put dismissed from jobs. As economic recovery is delayed, the number of households with all members unemployed will increase, as well as the number of unemployed with no entitlement to benefits, and inevitably the number of Spaniards at the poverty threshold. This situation will make it difficult to reduce the gap in *per capita* income which has widened in recent years between Spain and the European average. In 2007, the Spanish GDP *per capita* (measured in terms of PPS - Purchasing Power Standard - with data from *Eurostat*) peaked at 105% on the EU27 average. In 2008, the percentage fell to the 2005 figure (102.6%), and it is expected that the definitive data for 2009 and 2010 will significantly reduce this percentage because of the uneven economic recovery rates within the EU.

On the basis of this data the deterioration of all the indicators of household confidence and the motivation to increase savings comes as no surprise. The evolution of the rate of savings, the proportion of income allocated to savings as a safeguard against hard times, is illustrated in Graph 6. As in previous downturns, but now much more explicitly, the increased uncertain

has brought about a change in household behaviour. This is caused not only by the evolution of the labour market, but also by the associated deterioration in public finances which, in turn, conditions attitudes to the extent whereby it may affect levels of lending and lead to possible rises in taxation.

### **Graph 6**

#### **Evolution of households' rate of savings and mortgage debt**

Mortgage debt (left)

Savings rate (right)

% RBD

%

*Source: AFI from INE (Instituto Nacional de Empleo) data and Banco de España.*

### **3.3 Limitations of the workings of the banking system**

As in most advanced economies, during 2009 the Spanish economy continued to suffer from insufficient normalisation of bank lending activity. Although episodes of banking instability in Spain have been lower and less significant than in some advanced economies, the implications in terms of credit rationing have probably been greater in the Spanish economy. This is confirmed by the European Central Bank (ECB) in their survey of bank lending to euro-zone banks, as well as by the financial data on specific sectors published by the *Banco de España* (Graph 7) which reflected higher investment credit risk in the private sector in Spain compared with the rest of Europe. Those that suffer most from this rationing are the small and micro enterprises, and at the beginning of 2010 there were few signs that the situation was improving. In 2009, the credit granted by Spanish financial institutions to non-financial companies fell by around 4%. The consequences

of such a contraction continuing are much more adverse for the Spanish economy given that it is amongst the most bank-dominated in Europe: the proportion of assets and, in particular, liabilities channelled through banking intermediaries (without direct call on the markets) is very high. Accumulated household debt during the expansionary phase was equally high, and was closely linked to the resort to international funding by our banking system via the issue of securities whose maturity dates weigh significantly on the banks' decisions to grant investment credit. It must be borne in mind that the financing needs of the Spanish economy had been growing since 2002, standing at 9.6% of GDP in 2007. The recession accelerated the correction of this imbalance - which at the end of 2009 stood at around 6% of GDP – because businesses and households needed to lower their levels of indebtedness. In fact, like the majority of OECD economies, we in Spain were witnessing a reversal of roles compared to recent years: now private operators were generating savings while the public debt was growing at an significant pace. Unfortunately, we still understand little about the depressive consequences of this concentration of de-leveraging.

## **Graph 7**

### **Funding of the non-financial sectors**

Public Administration  
Non-financial enterprises  
Households and NPISHs  
Total  
**% of rates of inter-annual variation**

*Source: Banco de España*

The limitations on the functioning of the banking system also extended to other equally important areas in the overall context of this Report (IDE2010), such as the dramas enacted in the governance of some of the savings banks (*cajas de ahorros*) either by excessive and clumsy intervention by

some regional authorities, or by the surfacing of management problems, or by a mixture of the two. The damage to the reputation of these entities (it must be remembered that the sub-sector of savings banks holds a market share of just over 50% of Spanish banking activity) does not correspond to the role they have played in improving competition and efficiency in the entire banking system.

Not all regional governments showed a similar readiness to initiate the necessary restructuring of the sector. This becomes increasingly necessary as the excess of offers during a period of low growth becomes more explicit, causing difficulties for neutralising assets of a deteriorating quality, and not simply those directly linked to real estate. A restructuring is necessary that not only encourages the merger of savings banks within a specific regional authority, but also and preferably between various geographical areas, in order to reduce the existing duplications in networks and human resources.

#### **4. Evaluation of policies: measures to tackle the crisis**

The singularity of this crisis was beyond doubt shortly after its inception. The severity of the damage caused to the assets of the banking system endangering global financial stability, and its facile and intense transmission to the real sectors of the economies, are two of the factors that help us to understand the equally unique responses of economic policy in the most affected countries. The contrast with the policies adopted during other crises (the analogy to the Great Depression is no longer an exaggeration), and, in every case, with the diligence of their implementation, helps us to understand the singular role that governments have played in managing this crisis. It has been thanks to these policies and the use of public resources that the recuperation has begun to be felt in some economies.

Like most OECD governments, Spain has acted on two broad fronts: stabilisation of the financial system, and compensation for the sharp fall in aggregate demand in the economy. In last year's edition of this Report we

discussed the measures adopted at the beginning of the crisis which were introduced to facilitate liquidity and to offer guarantees to the banking system. The Spanish authorities were respectful of their European commitments and at no time was the maintenance of the stability of the banking system awarded such large amounts of public resources, either in magnitude or mechanisms, as were promised by other governments. In the following pages we will examine the measures adopted during this year, with particular reference to the decisions most formally representative of economic policy: the State Budget (*Presupuestos Generales del Estado, PGE*) for 2010.

#### **4.1 The State Fund for Local Investment and the Plan 200E**

Although drafted the year before, it was in 2009 when the most important concrete action was taken to stimulate the economy through public investment, structured around the so-called Local Investment Fund (*FEIL*) and the State Fund for the Modernisation of the Economy and Employment. The former was the most representative example of counter-cyclical fiscal stimulus. It was assigned 8,000m€, 0.7% of GDP. This was an employment-intensive investment whose final destiny was the municipalities. Although for three months it effectively contributed to counteract the steep rise in unemployment, the assignment of resources to specific destinations was not without controversy, and in any case it was a far cry from the necessary modernisation of the economic growth pattern which was later the subject of the draft Law for Sustainable Economy (*LES*).

Perhaps it would have been better to balance the short and medium term effects of the allocation of these resources by ensuring that its distribution was more directly related to the resolution of two, in principle, compatible issues which could assume a stimulating role: compensating for the fall in aggregate demand, and making progress in the diversification of the growth pattern. This was the modernisation which the *LES* draft was hoping to produce.

At the same time as the implementation of the *FEIL*, the Government allocated 40m€ to support companies in the automobile sector. This was effected largely through an extension of the Plan 200E which promoted the renewal of vehicles. The aim of Plan 200E was to encourage the purchase of new vehicles, maintain employment in the automobile sector, and encourage the replacement of older vehicles with less polluting ones. As a consequence of this plan, new car registration experienced a notable improvement during the last months of 2009 (and the beginning of 2010), particularly in sales to individuals.

#### **4.2 The State Budget (*Presupuestos Generales del Estado – PGE*) for 2010**

In formulating the draft of the State Budget the Government had the most important and educationally-relevant opportunity to get across their plans to the public, not simply about how they intend to manage the crisis, but also how they planned to put the Spanish economy on track for a more diversified growth pattern which was more appropriate for a modern economy. These were two entirely compatible objectives that could have provided additional justification for the inevitable increase of the budgetary deficit after the deviation recorded in the previous exercise: 2008 marked the first registration of a deficit after the budgetary surpluses of 2005-2007. The same effects that had been observed in the previous year worsened in 2009: the automatic stabilisers also played a part in the complete disappearance of the extraordinary income derived from the property market. In fact, the contraction in tax revenue was of an unprecedented intensity compared with the past two decades and had a consequent effect on the tax burden (revenue over GDP) at levels which were also low when compared with the rest of Europe. This co-existed with an increase in public expenditure caused by the payment of welfare benefits. The public deficit at the end of 2009 was 11.4% of GDP compared with 4.1% the previous year.

The accelerated deterioration of public finances was not a feature that was unique to the Spanish economy. In the US and the UK the gap between revenues and expenses was also significantly extended, but with the difference that they were holding a stock of public debt notably higher than the Spanish which was still below the European average. In the budget for 2010 the Spanish Government designated the sectors due for a fairly weighty reduction in spending, particularly in areas of investment and including areas which had been considered up until then essential for the diversification of the pattern of economic growth.

The first comment to make about one of the most important laws of the legislature was its inadequacy to confront the objectives of off-setting the economically-depressing effects of the crisis, and secondly, its inadequacy as a facilitator to this “model of growth” which was to be addressed by the *LES* months later.

This was not a budget for economic recuperation, but rather a budget for transmitting a clear message to the international financial community that Spain was determine to correct its public imbalance. The orientation of Spanish fiscal policy in the PGE 2010 was excessively timorous: it was a “limited budget”, the result of feeling intimidated in the face of the threats from the credit rating agencies and the possible extension of the risk premium for the Spanish Treasury. In contrast with what was happening in most advanced economies, the priority for the PGE appeared to be redirecting fiscal deficit rather than guaranteeing economic recovery and a consequent reduction in unemployment. Thus, from July 2010, the increases in public investment which are necessary for continuing economic modernisation in Spain, as well as tax increases – including those related to VAT – have been largely sacrificed.

Is some countries, particularly the UK, the debate about the choice between the easing of fiscal adjustment and the period of consolidation has been the subject of very detailed discussion. Too much adjustment may sacrifice the ability to generate income and employment. Various means of

communication little-suspected of being overly reckless or Keynesian including the *Financial Times* which published an editorial (February 19<sup>th</sup> 2010, "Fiscal Battle begins"), are not pressurising the authorities to cut the public deficit. This was a recommendation made to the Spanish Government a couple of weeks before the economic authorities put on their 'road-show' in major foreign financial centres to allay tensions over the risk of Spanish public debt. It must be emphasised that this decision should not exclude medium-term consolidation plans of compliance with the unequivocal but feasible requirements of European stability.

### **Graph 8**

#### **Public deficit and Spanish Public Debt**

State

Regional Governments

Local authorities

Budgetary balance

(% of GDP)

Public Debt

(% of GDP)

Provisional

37 points of GDP

Source: *AFi and Banco de España*

While some governments, most prominently that of the United States, have introduced policies that strengthen supply and demand in their fight against recession and have defined a growth path in the medium and long term, the Spanish relinquished this course of action in order to focus fundamentally on communicating their plans to sanitize the economy. Public investment in technological and human capital suffered a very serious reversal to what had recently been an explicit commitment to make up for lost time.

Government funding destined to help increase productivity in sectors such as those related to improving the integration of information technology throughout Spain – an indication of the greater intensity of knowledge within the Spanish economy – of which the most important was the *Plan Avanza*, as well as increased allocations for R & D, have largely been sacrificed. One of the consequences of these budgetary restrictions was the resignation of the Secretary of State for Research.

In such a crucial time as this, the presentation of the draft Budget should also have provided an occasion for a debate on economic policy. Instead, the public watched how the politicians were prodigious in formulating critical generalities, while at the same time the party in power was negotiating with representatives of the minority parties, not so much to improve the proposals for slowing-down the deterioration of Spanish living condition, but more to ensure their own political survival. For its part, the PP did not provide any alternative beyond verbose but empty pronouncements on austerity, structural reform, lower taxes, and so forth. The marked absence of detailed argument was an inappropriate response to the severity of the moment and unworthy of professional politicians in one of the most advanced economies in the world. The groups which supported this budget bill did not precisely express much enthusiasm for it.

An important opportunity was missed to demonstrate a capacity for working together to settle the outstanding issues that needed to be resolved in order to survive one of the most complicated economic situations that Spain had experienced for decades. The chance was lost to demonstrate that the circumstantial increase in the deficit, whose original *raison d'être* was to avoid an excessive rise in unemployment and to speed-up the modernisation of the Spanish economy, provide a motive for political agreement. The inability of the politicians to accept this will probably prove to be one of the underlying factors that explain the notable weakness of business and public confidence at the end of the year.

### **4.3 Pension reform and austerity until 2013**

In 2010, the Government announced its intention to reform the public pension system and to introduce a fiscal consolidation programme to reduce the public deficit to 3% in 2013. The gradual extension of the retirement age from 65 to 67 years was the main point of the first of these plans. The reduction of public spending by around 5% of GDP summarises the main purposes of the Austerity Plan 2011-2013 which will dominate State budgets during these years. It is not easy to anticipate whether these contractive actions relating to public spending – in short, this rapid retreat from supporting aggregate demand – will manage to satisfy the main objective of driving away the fear that the markets for government bonds and their mediators, the credit rating agencies, will end up condemning the Spanish economy in the same way as they have the Greek economy.

In the edition of IDE 2011, when more details are known, it will be possible to comment more extensively on these plans. For the moment, it is worth stressing the desirability of ensuring that the proposed package achieves the political and social backing that it deserves, a task which is essential for democratic co-existence, and one of the purposes of IDE.

### **4.4. Pacts for labour reform**

At the end of 2009, before the Government announced its intention to reform public pensions, agreement on the reform of the labour market looked hopeful. Although it is impossible in an objective diagnosis of the reasons for the sharp increase in Spanish unemployment to ignore the collapse of activity caused by the excessive weight of residential construction and the no less important amount of private indebtedness, it is understandable that workers' representatives and owners seek ways to improve the regulation of this market with the basic aim of facilitating recruitment. It would also be an error to think that what was described during a period of expansion and high rates of immigration as "in fact, one of the most flexible markets" should now

be accused of being too rigid and – even less true – having made too many ‘social conquests’. The Spanish unemployment trends would certainly be much lower if the sector specialisation of the Spanish economy were different.

A reduction in the duality that exists today between Spanish workers, greater negotiating flexibility adapted to the specific conditions of companies, remuneration linked to a definition of profitability in productivity rather than the rate of inflation, and the strengthening of training, should form the basis of a pact for labour reform.

At the beginning of November, the worsening of the crisis and the increase in unemployment forced the interested parties to start talking. The unions needed to show the workers that they were a necessary element in finding solutions to the crisis; the employers needed to legitimise their ability to find solutions, and the Government were contemplating with undisguised satisfaction what might prove to be the only favourable socio-economic event of the year. These approaches have not been free of problems, caused mainly by the dialogue between the unions and the employers. The latter demanded that the Government postpone the realisation of their reform plans in order for the talks to make progress. Finally, in February 2010, after an agreement on wage revisions, the Government put forward various reforms to be considered by the interlocutors. The five most important were:

- a) A modification to the system of collective bargaining in order to improve the internal flexibility of companies;
- b) Promoting a reduction in the working day as a temporary means of adjusting employment;
- c) Revising the subsidised policy for hiring, and redirecting the resources to more efficient employment policies;
- d) Strengthening the public employment services and improving intermediation using all the available instruments;
- e) Reducing the duality and the number of temporary contracts in the labour market.

#### **4.5 The draft bill of the LES**

In November, when the crisis was in full flood and its effects on unemployment were glaringly obvious, the president of the Government insisted that the heralded “change to the economic model”, or the “model of production”, was the guiding light of his economic policy. From that moment, when the first proposals of the draft bill for the law on a sustainable economy were revealed, it became obvious that this new model would be closely linked to the idea of sustainability. In the prologue to the Presidential Report published in the last days of 2009 the definition of ‘*sustainability*’ included not only the “accepted environmental and economic/financial aspects but also a social aspect”. This Strategy for Economic Sustainability was presented as a “broad programme of reforms to be carried out during this legislature with the aim of improving regulatory circumstances and business competitiveness”.

In evaluating such a project, the prime consideration is whether it is adequate to deal with the current demands of the Spanish economy: in short, whether it is able to distinguish between what is important and what is urgent. It is of little use to admit that the purposes of the bill are laudable if they fail to cure the main problem facing the Spanish economy: the highest unemployment of any country in our economic zone. Its reduction should be the top priority for our economy, primarily because the unemployment rate is a manifestation of the failure of an economy and a demonstration of the inability of its agents. Without its correction, not only are the advances in welfare achieved during the years of expansion destroyed, but there is also a de-capitalisation of the most valuable economic factor: labour. Given the current circumstances of the Spanish economy – high household indebtedness and an accelerating deterioration in the quality of banking activity – the persistence of this imbalance will give rise to worse consequences than were ever experienced during the transition years when a reform of a significant part of the productive apparatus was introduced.

While it is true that the road to hell is paved with good intentions, many of the proposals contained in the Act will do no damage and may even be beneficial for increasing growth. And the principles reflected in Article 3 of the draft are totally acceptable. But to respond to the current reality of the Spanish economy with a bill which shelters under the rubric of sustainable economy is, at best, naive; and at worst, is a way of diverting attention from the most critical issues. In either case, the draft bill led to a loss of confidence in the ability of the authorities to manage the economy in these very difficult times.

The generic claim of the bill to change the “productive model” has already been promised for many years, and more precisely was one of the main elements of the electoral programme which brought the PSOE to power in 2004. The manifestly unequal and heterogeneous range of proposals that fill the 198 pages of the draft under discussion could well have been announced at the beginning of the legislative term when unemployment was falling. Nobody can object to them individually, and even the most pragmatic would admit that “better late than never”. But the task of administering scarce resources should have led the central authorities to pay the greatest attention to the most important issue. They might also have transmitted an image of confidence if they had managed to reach an agreement with the opposition on the manner of confronting the most urgent reforms – and not necessarily the most sustainable. Transmitting confidence is the necessary condition for making progress in resolving the problems caused by high unemployment, and also for giving a lasting stability to the banking system - another of the pressing demands left unaddressed in this repertoire of intent. The Government and the main opposition party would do well to work together to terminate this vicious circle of unemployment and to speed-up the return to a normalisation of lending. Without both there will be no worthwhile sustainability.

Instead of this omnibus bill, to some extent a reminder of the catch-all legislation of the past which has been criticised in earlier editions of the IDE,

it would have been more useful if the PGE project had incorporated some of the priorities mentioned here instead of cutting public investment in areas favouring the knowledge economy.

The funding allocated to these multiple proposals is to be made available via two funds which are to be set-up during 2010: the State Fund for Employment and Local Sustainability, and the Fund for the Sustainable Economy (*El Fondo Estatal para el Empleo y la Sostenibilidad Local* and *El Fondo para el Economía Sostenible*). The first, worth 5,000m€, will allocate money to the town halls for the development of science and technology parks, telecommunications networks, and investment in energy-saving and efficiency projects, and renewable energy development. The second will be endowed with a maximum budget of 20,000m€ over 2010 and 2011, and will be managed by the Official Credit Institute (ICO), with half of the funds coming from financial institutions. The funding will be directed towards investment projects in the private sector similar to those listed above for the local authorities.

## **5. The agenda for economic modernisation**

The present crisis has not only seriously damaged the welfare of Spaniards but it has also compromised the future growth of the Spanish economy. Future GDP will be prejudiced by these high levels of unemployment which will very probably cause high levels of structural unemployment and a very significant contraction in investment.

As previously noted, the management of the crisis should be compatible with the introduction of factors that will promptly establish a diversification of the Spanish economic growth pattern. This would provide the best guarantee for achieving sustainable growth of *per capita* income and for developing projections of policy actions into the future.

Two types of absolutely complementary measures are necessary: those destined to compensate for the fall in private economic activity and the no

less important action to boost household and business confidence. This implies an attempt to maintain public investment assigned to generate competitive capacity (those that encourage the necessary acceleration of integration into the information technology society), and the need to transmit a strong sense of commitment to reforms which stretch beyond those included in a catch-all bill. A broad political consensus will be needed to achieve this last goal, and will be absolutely necessary in order to meet the medium-term requirements of sanitising public finances. The best guarantee of this commitment has to be an exercise in realistic revenue forecast and, given the time-span of such a project, an alliance between those in power now and those who might be in power in the future. Political cooperation is also necessary in order to achieve an improvement in the quality of the institutions: a pre-condition for making progress in increasing productivity in all areas and for long-term sustainable growth.

The civil service administration cannot be left out of this attempt to improve the efficiency of the overall workings of the economic system. Improving its practices in a specific plan of improved productivity would be the most explicit sign on the part of the authorities of their commitment to this much-needed economic modernisation. Particularly relevant in this regard are the obstacles which continue to delay the creation of new companies in Spain: the present procedures and deadlines name Spain as one of the least favourable OECD countries for setting-up new companies. And there is also a need to increase the support offered by the educational system to innovation and risk assumption, both fundamental necessities for business regeneration.

The attention given to improving corporate governance, and especially that of the savings banks, is an indication of the real concern about a widespread and urgent need for institutional improvement which has been highlighted by the evolution of this crisis. The excessive intervention by some regional governments in this important sector of the credit system has illustrated a particular case of institutional practices far removed from modern

economies. Improving the quality of management in this area does not require any budgetary compensation and will contribute to improving the image that national and international economic agents have of Spanish institutions. Standardisations would also facilitate the flow of credit in an economy which is suffering the most from the limitations imposed by the global financial crisis.

A significant part of this agenda requires political skills rather than budgetary allocations. It is true that never more than at this time of severe economic crisis, with continued welfare losses arising from the contraction of employment and growth, has there been such a demand for the very best skills of all those involved in politics. It would be extremely unfortunate if the already obvious drop in the welfare of the Spanish population was sacrificed to the short-term interests of one party or another.

## **6. Conclusions**

1. The international political environment in 2009 was more favourable than the previous year. During the year governmental action has been essential; far from being the problem, it has been the solution to an unprecedented crisis. Some of the fragilities of the recuperation result from this public role of protagonist, and for two reasons: the fear that the disappearance of stimuli will not be compensated for by private sector activity; and the unprecedented deterioration of public finances throughout all the advanced economies.
2. In spite of this, there is persistent, widespread credit rationing, and an absence of international banking regulations which address, firstly, the extraordinary (and often scandalous) remuneration of financial executives, secondly, the adequacy of banking capitalisation, and thirdly, the protection of consumers in relation to financial products. The Obama Administration has been the most vociferous in calling for action on this last item and has implemented a tax levy on uninsured bank liabilities with the aim of recuperating the net cost which the American taxpayers

have paid to rescue the banks in difficulties. Europe has made some proposals but they are still not in force.

3. To say that Spain has survived the worst only means that the rhythm of the fall in GDP and the rise in unemployment has moderated. But the year ended in recession and with unemployment figures standing at almost 18% of the active population. The fall in the activity and the confidence of the economic agents has continued, as has the rationing of credit. Further reflection is needed about why Spain destroys jobs at a faster pace than the corresponding fall in GDP. In short, there is enormous unemployment, an associated decline in disposable income, and deterioration in welfare conditions especially for families with lower incomes.
4. The Government squandered the opportunity to use the debate on the 2010 State Budget to express their intentions regarding crisis management and their plans to diversify the Spanish growth pattern. Meanwhile, the opposition offered no alternative economic policy beyond rhetorical statements on the need for austerity, structural reforms and tax cuts. Instead of budget proposals aimed at economic recovery, they were directed towards convincing the international financial community of Spain's commitment to correct its public deficit (11.2% of GDP). This will mean sacrificing some important part of the vital public investment needed to bring about a change to the Spanish model of production.
5. The major reforms (labour market and pensions) are still pending. A draft bill has been submitted on a sustainable economy (LES) directed towards modernising the economy. Everything in the bill has been well-intentioned, but it emerges as a hotchpotch of measures. It would have been preferable if some of the priorities identified in the LES had been incorporated into the State Budget, rather than cutting investment in public projects promoting the knowledge economy.

6. The management of scarce resources, particularly during a recession, should oblige the authorities to focus on key priorities. Addressing these issues will set Spain back on the road to growth in employment and public revenue. Furthermore, they will help to identify which reforms are necessary for the normalisation of the financial credit system and which austerity measures are needed not only for central Government but also for the regional governments – of whatever political allegiance. These priorities are, therefore, transversal and they will affect more than one term of legislature. They should be the subject of a State Pact that has the breadth of vision to ensure that all the main political parties and economic agents are included. It is all very well to be pedagogic about what problems are most important, but in this emergency situation the top priority must be to solve the problems that are most urgent.

# 3

## The political strategies of the Government and the opposition

### 1. Introduction

Throughout 2009, both the Government and the opposition found that the possibilities for developing political strategies were severely limited. On one hand, the economic crisis took up a large part of the Government agenda obliging them to shift the focus of debate from the increase of rights, which had been at the centre of the previous legislature,<sup>1</sup> to social policies and the rather pompously-named change of the model of production. Although it would be wrong to analyse both legislatures as watertight compartments, there is a common link between the two periods: the State's interventionist role as a major player in the public arena. The greatest difficulty faced by the Government in gaining acceptance for their policies was the wide-spread public perception of their improvised nature.

On the other hand, the Popular Party (PP) also faced many problems in developing their opposition strategy. Internal disputes, corruption scandals, and a constantly-questioned leadership forced the PP to invest a lot of time resolving internal conflicts. What underlay many of their problems was a disagreement over their opposition strategy: while some of the party wanted to continue with the hypercritical strategy, known as '*crispación*', of the earlier legislature, Mariano Rajoy and his team opted for an opposition which was less strident and focused on exploiting the Government's problems for their own gain.

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<sup>1</sup> See: The Report on Spanish Democracy 2008, Chapter 2 (IDE 2008).

In the national opinion polls the difficulties for the Government and the opposition over deciding on strategy had a worsening effect on both parties: if the Government's work was rated as negative, then the role played by the opposition was approved of still less. Nevertheless, this led slowly but surely to an increase in voting intention in favour of the PP. Political results do not depend solely on the economic context; political strategies are also very important. The electoral outcome of the legislature is still open.

## **2. Government response to the economic crisis**

Governments must make two decisions before applying shock-tactics to an economic crisis: The first is how to present the situation to the public, i.e. its severity, the medium-term expectations, and the challenges and sacrifices that are needed for recovery. Some politicians have favoured a strategy of 'blood, sweat and tears' – promising a light at the end of the tunnel only if very tough action is taken. This option may appear a little risky from an electoral point of view given that it means introducing unpopular measures, but by anticipating poor results, the Executive can better defend its management later.

During 2009, Zapatero's Government chose the other option: to soften the impact of the recession, to be optimistic about the speed of recovery, and to convey confidence about exiting the crisis. With this approach they hoped to influence the economic agents; in the words of President Zapatero, "pessimism does not create jobs".<sup>2</sup> Nevertheless, the excessive gap between the perspectives of the Government and the macro-economic data did not favour this strategy. Spain's poor economic performance undermined confidence in the ability of the Executive and its leadership to end the crisis.

The second decision a government must take has to do with the nature of the shock tactics against recession. Zapatero opted for a typically social

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<sup>2</sup> See: *El País*, 01.06.2009.

democratic policy of increasing public spending, especially social spending, in order to protect those worst-hit by the crisis. Although the expected result was a rise in the deficit (11.4% of GDP in 2009), the Government had some leeway because of the low level of public debt (relative to neighbouring countries).

From an electoral point of view, a tax cut would seem a more appropriate shock measure, being a popular policy amongst the public.<sup>3</sup> However, social spending can also be part of an electoral strategy when it is used to compensate those most affected by unpopular economic policies. This happened in the eighties in Spain when the Government received wide social support for its social policies despite the unpopularity of its economic policy.<sup>4</sup> However, there was one important difference between then and the current period. Whereas the growth of unemployment in the early eighties was the result of tightening monetary policies and structural reforms (such as industrial restructuring) undertaken by the Government of Felipe Gonzalez,<sup>5</sup> in the current crisis reforms have been introduced after a dramatic increase in job losses.

## **2.1. Emergency measures to confront the crisis**

During 2009 the Council of Ministers approved a package of concrete measures aimed at avoiding job losses in key sectors, such as the automobile industry,<sup>6</sup> and giving additional protection to the unemployed.

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<sup>3</sup> According to the latest poll of the *CIS* on Public Opinion and Fiscal Policy, 54% of those surveyed believed that Spaniards paid “a lot” of tax, compared with 37% who thought Spaniards paid “a normal” amount, and 2.5% who thought “a small” amount was paid. (*CIS 2809*, question 12).

<sup>4</sup> See: José María Maravall (2008) “*La confrontación política*”. Madrid: Taurus, páginas 70 y 71.

<sup>5</sup> *Ibid.*

<sup>6</sup> An integrated plan for the car industry was approved at a cost of 4,000m€ which included incentives for the purchase of new vehicles, thus renewing the Spanish car fleet. The Government also approved aid amounting to 3,000m€ to promote research into new technologies in the automobile sector. In addition to the car industry, other sectors such as aviation, tourism, agriculture, and even the furniture and toy sector were helped by government intervention. Overall, the State spent more than 16,000m€ in plans to halt the destruction of small and medium enterprises and to support major industrial sectors through measures encouraging private consumption.

Some of the measures to fight unemployment were an increase in training schemes and, most importantly, an exceptional grant of 420€ for a six-month period for those whose time-limit for receiving unemployed benefit had ended. The most far-reaching measure was the launching of the Spanish Plan for Stimulating the Economy. This plan, known as Plan E, included a series of measures to stimulate employment and included a local state fund worth 8,000m€. The fund was allocated to municipalities to enable them to undertake major public works in order to reincorporate construction workers into the job market and it led to the creation of 420,000 jobs. However, many of these jobs were short-term and will probably disappear in the first quarter of 2010 when the period for these works terminates.

That Government action should focus on the protection of the unemployed makes sense both in terms of its economic and social impact. Concern about unemployment consistently appears in opinion poll data. As opinion polls published by the Centre for Sociological Research (*CIS*) have demonstrated for a long time, unemployment has been identified as the main problem facing the country, even in periods of economic growth. Thus, except for brief moments, during the 2004/2008 legislature<sup>7</sup> it appeared as the main topic of concern for Spaniards even though the economic indicators were positive.<sup>8</sup> Since December 2008, the percentage of citizens who thought that unemployment was the country's main problem has continued to grow, and the last *CIS* barometer of 2009 put the percentage at 79%.

An important factor demonstrated by public opinion surveys is that people appear to judge the overall economic situation according to their evaluation of the evolution of unemployment, as shown below in the Graphs 1, 2 and 3. Graph 1 shows the evolution of the total number of unemployed during

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<sup>7</sup> Terrorism was placed above unemployment as the biggest problem between March and April of 2004, December 2004, and between January and March 2007, and in December of that year. Housing was rated the main problem in September 2007.

<sup>8</sup> The economic indicators of the 2004/2008 legislature were excellent and improved on those inherited from the PP. During those years, the annual rates of growth were always above 3.5% which led to an enormous creation of jobs and a budgetary surplus. See: Report of Spanish Democracy 2008, Chapter 2 (*IDE 2008*).

2009. If in January the unemployed in the active population numbered 3,327,801, the figure for December was 3,923,603 – i.e. 595,802 higher. However, as Graph 2 shows, between May and July monthly unemployment changes were negative –i.e. the number of unemployed fell during these months. Since August the unemployment rate once again began to rise consistently, albeit at a slower pace than it did between February and March.

The comparison of Graphs 1 and 2 with Graph 3 indicates that there is a relationship between changes in unemployment and the percentage of positive ratings of the economy. These ratings improved throughout the period February to July - when monthly unemployment rates fell - but in August they worsened as the unemployment figures began to rise. The assessment of the economic situation in late 2009 was the worst since Zapatero came to power and also the lowest since 1996.

### **Graph 1**

#### **Evolution of unemployment in 2009**

Registered unemployed

Number of unemployed

Jan

Feb

March

April

May

June

July

Aug

Sept

Oct

Nov

Dec

Source: SEPE – [www.sepe.es](http://www.sepe.es)

## Graph 2

### Evolution of monthly variation in unemployment in 2009

Monthly variation of unemployment

Number of unemployed

Feb

March

April

May

June

July

Aug

Sept

Oct

Nov

Dec

Source: SEPE – [www.sepe.es](http://www.sepe.es)

## Graph 3

### Positive evaluation of the economy<sup>9</sup>

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<sup>9</sup> The indicator of the current economic situation (*SEA – Situación Económica Actual*) is constructed from the Question P1 in the following way:

$$SEA = \frac{100 \cdot p_1 + 75 \cdot p_2 + 50 \cdot p_3 + 25 \cdot p_4 + 0 \cdot p_5}{p_1 + p_2 + p_3 + p_4 + p_5}$$

Where  $p_1$ ,  $p_2$ ,  $p_3$ ,  $p_4$  y  $p_5$  is respectively the proportion of the opinions: very good, good, normal, bad, and very bad.

%  
Feb  
March  
April  
May  
June  
July  
Aug  
Sept  
Oct  
Nov  
Dec

*Source: Indicator of current economic situation, CIS opinion poll*

## **2.2. Changing the economic model**

The crisis has not only made evident the serious deficiencies of the model of production but, as a consequence, has placed reform very high on the political agenda. Many analysts had warned against the Spanish economy's heavy reliance on construction which is a labour-intensive sector mainly employing semi- and un-skilled labour. However, while the economy grew there were no strong incentives to carry out the necessary far-reaching reforms or to pay the associated costs. The economic crisis has meant the end of the housing bubble. As a consequence, the Government has seen the possibility – and felt the obligation – to adopt measures to modernise the economy.

The draft of the *Ley de Economía Sostenible*, *LES*, (Law of Sustainable Economy) addressed this new agenda of modernisation and after the summer it became the Government's main theme. So, from concentrating on social policies to protect those worst affected by the economic crisis, the Government's discourse changed tack to focus on economic modernisation.

This change entailed some difficulties for the PSOE given that the PP has traditionally been perceived by the public as better managers of the economy. Perhaps with the idea of taking-up this challenge, Zapatero carried out the largest restructuring of his Cabinet since his arrival at Moncloa (the site of the presidential office). His main objective was to strengthen the technical and political profile of the Council of Ministers and, at the same time, to obtain a greater role for the president.<sup>10</sup> Zapatero has appeared as directly responsible for virtually all government action and in many cases this has over-shadowed the work of his ministers.

The draft LES established a series of reforms designed to promote balanced and sustainable economic growth on three separate fronts: firstly, the improvement of the economic environment: reforming the regulatory bodies of the grid industries (such as the National Energy Commission); promoting financial sustainability; reforming government procurement, and promoting public/private collaboration. The second front focused on promoting competitiveness through measures such as cost reduction and speeding-up the time-process for creating new companies; promoting initiatives related to the information society; and facilitating the commercial exploitation of patents for public bodies. The third front addressed environmental sustainability. In this area, the Government included the reduction of greenhouse gases, the promotion of sustainable transport and mobility, and measures relating to housing. Finally, amongst all the measures taken, the ones to abolish the tax deductions, in the near future, for the purchase of a primary residence (these incentives had been related to the increase of the housing bubble) and the strengthening of the housing rental market should be highlighted.

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<sup>10</sup> Six ministerial changes were made (in a total of 17 ministries). The most important change was precisely that of the Economic and Tax Ministry which passed from Pedro Solbes to Elena Salgado, who had been the Minister of Public Administration and had a more technical than political profile. Other relevant appointments were those of José Blanco as Minister of Public Works, Manuel Chaves as third Vice-President and Minister for Territorial Policy, and Trinidad Jiménez as Health Minister. Finally, Angel Gabilondo substituted Mercedes Cabrera in Education and Angeles González Sinde took over from Cesar Antonio Molina as Minister of Culture.

The announcement of the LES came at a time when the overall assessment of the Government and the economy were very negative indeed.<sup>11</sup> For the first time since Zapatero's arrival to power, the PP exceeded the socialists in voting intention, the assessment of the President among voters was at an all-time low,<sup>12</sup> and the PP was in the lead as the party most capable of dealing with the economy, employment, and immigration.

Once the bill was presented it was rejected by the rest of the parliamentary groups. The main criticism made against the LES, besides that it was a hotchpotch of many random measures and considered inadequate to combat recession, was related to the ambiguity over what type of economic growth model the bill was trying to establish and the lack of fundamental measures that could establish a foundation for an alternative to the existing productive model.

Among the main difficulties in designing the modernisation project was the problem of reforming the labour market and the education system, given that these reforms would need to achieve a broad consensus between the Executive, the regional governments and the social agents. According to some analysts education plays a key role in changing the economic model (see the Chapter on education in this Report, which develops this argument).<sup>13</sup> Spending on education has increased enormously during the last twenty years, rising from 3% of GDP in 1982 to 4.4% in 2007.<sup>14</sup> In addition, various reforms have situated Spanish education on a similar level

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<sup>11</sup> In the CIS barometer of October 2009, 46% of citizens believed that the Government performance was "bad" or "very bad" (compared with 34% in October 2008). The lowest-rated policies were the economic and employment policies: 73% of public opinion thought that the economic situation in Spain was "bad" or "very bad" (compared with 60% in October 2008), while 67% thought the same with respect to the employment situation (compared to 40% in October 2008).

<sup>12</sup> Despite a considerable increase in unemployment and a fall in the evaluation of the economic situation during 2008, at the end of this year the public continued to rate the PSOE as the party most capable of handling all public policy. The policies in which the PSOE rated most highly compared to the PP were justice, equality, and social policies, while the least distance between the two parties was found in economic policy (40% of respondents believed that the most capable party was the PSOE, with 35% believing that it was the PP).

<sup>13</sup> See the article by Guillermo de la Dehesa in *El País Negocios*, 27.12.2009.

<sup>14</sup> See the Ministry of Education & Science, and FIES (1996).

as other countries in the same economic environment<sup>15</sup>, meeting a dual challenge: the level of school drop-outs has not increased and at the same time universal access to education and an increase in the minimum duration of mandatory education have been achieved. However, the importance of education as a tool to change the production model is not entirely clear unless it is accompanied by structural reforms that can absorb the supply of skilled workers and reduce its seasonality.<sup>16</sup>

The Executive, perhaps conscious of the need to compliment educational policies with policies related to the regulation of employment, later in the year once again gave priority to the reform of the labour market after a failed attempt to reach an agreement with the interested parties in July 2009. The Executive's proposal for labour reform negotiations laid down certain conditions. To avoid a return to the stalemate over issues related to the cost of dismissals they opted – surprisingly – to exclude discussion on any measures based on reducing the cost of dismissal, which somewhat limited the content of the reform. Given that one of the main demands of the employers included the “crisis contract”, which lowered redundancy costs, doubts arose over the success of this new attempt at social dialogue.

In short, the main tasks are yet to be achieved. One of the most important question marks still hanging over the reform is which of the social groups will be winners and which losers. Although, from the measures outlined by the Government it would appear that on balance the results will be positive, it seems implausible that a great change to the productive model does not imply that some groups will have to pay a price. How, for example, will construction workers be reincorporated into the labour market? And how can they be reabsorbed without jeopardising a productive model based on R & D

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<sup>15</sup> See Julio Carabaña (2007) “PISA 2006: sin novedad”, *Claves de la Razón Práctica* 179.

<sup>16</sup> As demonstrated by Javier Polavieja, the Spanish labour market has a high number of “bad” jobs, but this data does not alone explain the high level of seasonal contracts because there is also a high percentage of seasonal contracts amongst the most qualified workers (see: “Por qué es tan alta la tasa de empleo temporal? España en Perspectiva Comparada”, *Revista Española de Investigaciones Sociológicas* 113 2006).

+ i? For now, it is unknown who will be the protagonists of the “industrial reconversion” of the next decade, and for how long social policies can be used to protect the less fortunate. The timing of the reforms will determine whether these groups will be the key to deciding the results of the next general election.

### **2.3. Were the Government measures to combat the crisis improvised?**

A certain amount of improvisation in confronting the recession was inevitable. The origins of the economic crisis are to be found in the world financial crisis which erupted over a short period and which meant that there was a high dose of uncertainty about its evolution. Political action is not immune to changes to reality and unexpected events; therefore governing also means improvising, especially when circumstances are exceptional.

The cost of the measures introduced by the Government to confront the crisis in 2009, including the economic stabilizers, came to approximately 71,000m€ (about 7% of GDP). If we compare these figures to the more economically-advanced countries and the major emerging democracies we find that the Spanish Government was among those that made available the most financial resources. The main question is whether they were effective.

The accusation of improvisation can be interpreted as part of the strategy of the opposition to discredit the Government. But it is also likely that different and recurring actions prepared the ground for this criticism, such as the vacillation on fiscal reform or the 420€ benefit to the unemployed. For example, in late August, the Minister of Public Works, who is also the secretary of organisation for the PSOE, José Blanco, said that the Government was prepared to raise taxes at the higher income level; after being denied by the economic vice-president, Elena Salgado, the reform that was finally adopted reduced the benefit to the unemployed to 400€, raised the maximum and average rates of VAT, and slightly increased the tax

burden on income from capital. The group most affected by these changes was the middle class. The limited scope of the reform contrasted with public expectations and, above all, the absence of Government explanations combine to create a sense of disillusionment which particularly affected the most politically progressive part of the electorate.

The Government also hesitated when launching the 420€ six-month extra benefit to help those of the unemployed who had exceeded their time-limit on normal unemployment benefit. At first, the measure was intended to help those who had come to the end of the period of benefit in August. However, trade unions, fearing that there would be 600,000 unemployed without any financial assistance, pressurised the Government to extend the measure. Finally, it was extended until January 2009. (No deberia ser 2010? RvdB)

The permanent discrepancy concerning the evolution of the crisis between the more down-played version given by the Government and the more alarming macroeconomic data – a very sharp slowdown in economic activity and rising unemployment – meant that the Government's statements appeared to lag behind reality. On the other hand, perhaps the high-sounding purposefulness that accompanied the presentation of some of the initiatives (such as the oft-repeated “change of the economic model” and “the new growth model”), not only generated criticism from other politicians, but possibly contributed to undermine the coherence of all the measures that the Government had been gradually implementing since the beginning of the crisis.<sup>17</sup>

### **3. The Opposition as an alternative**

#### **3.1. The limits to the opposition's strategy**

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<sup>17</sup> For a review of the measures adopted by the Government see: Javier Vallés and Carlos Maravall, “Estrategia ante la crisis económica”; *Presupuesto y Gasto Público*, 2010, número 58.

Throughout 2009 the PP confronted three major constraints on the development of their strategy of opposition: the internal division between a hard/soft line, corruption scandals that involved prominent leaders of the PP, and the weakness of Rajoy's leadership. These three problems were inter-related. In other words, it is impossible to understand the poor ratings of Mariano Rajoy, for example, without taking into account the PP's apathy and lack of authority when there was a need to take internal party decisions.

### **The internal divisions of the PP**

As noted in IDE 2009, a major political consequence of the electoral defeat of the PP was that part of the leadership concluded that the strategy of hyper-criticism had lost them the election. Moreover, even if they had won, they would have found it very difficult to encounter any political allies given the degree of their parliamentary isolation. Their strategy of creating tension had not allowed them to win, nor to govern.

An analysis of the election also uncovered some worrying data for the conservatives. Sociological studies concluded that a large part of their electoral defeat was due to a widespread mobilisation of voters who wanted to thwart any chance of a PP victory.<sup>18</sup> The PP generated enormously strong rejection in some sectors of the electorate, and this could continue to be a problem for the Spanish right.

For this reason, Rajoy not only decided to re-stand as the leader of PP but he also decided that his re-election would be based on changing the opposition strategy. This change would not simply mean altering the messages and arguments employed during the previous legislature, but would also entail making organisational changes in those regions where the party had been most heavily defeated: Catalonia and the Basque Country. Consequently, Alicia Sánchez-Camacho and Antonio Basagoiti were elected

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<sup>18</sup> See "Report on Spanish Democracy 2009", Madrid: *Fundación Alternativas*; Ignacio Urquizu (2008) "9-M: elecciones tras la crispación", *Claves de Razón Práctica* 181, pp. 48-57, and Julián Santamaría and Henar Criado (2008) "9-M: elecciones de ratificación", *Claves de Razón Práctica* 183, pp 42-51.

as the new leaders of the PP in Catalonia and the Basque Country respectively.

However, these changes were not acceptable to everyone in the party. A relevant part of the party - encompassing historical leaders from the time of José María Aznar, important members of the Madrid section of the party, and the sector of the media who had fanned the flames of tension – not only clamoured for a return to the political climate of the previous legislature, but also, by insisting on the weakness of Rajoy, sought to replace him. The president of the Madrid region, Esperanza Aguirre, was a leading member of this faction.

Throughout 2009, the defenders of the hyper-critical, *crispación* strategy had been involved in various political episodes which highlighted the internal divisions of the PP. Two of them were particularly important: the spy ring operating in the Madrid section and the fight for power over the *Caja Madrid*. In January 2009, the newspaper, *El País*, revealed that ex-members of the security forces were accepting orders from a councillor who was a close colleague of Esperanza Aguirre, Francisco Granados, and that amongst other commitments they were spying on other important leaders of the PP in Madrid. Almost all the politicians being spied on had one thing in common: they had supported Mariano Rajoy in his stand for re-election as leader of the PP at the party conference in Valencia in 2008. Furthermore, the spying had taken place during the pre-conference period. Thus, everything pointed to the fact that the motive behind the spying was political and was related to the internal battle within the organisation. Both the PP and the Madrid regional government set-up commissions to investigate the affair; the first one created little stir and the second was concluded after a short time as a result of the large majority the PP enjoyed in the regional parliament. However, the two regional MPs who were spied on, Alfredo Prada and María Carmen Rodríguez, absented themselves from the session voting on the findings in which the regional government was exonerated. This gesture was an indication of the dissatisfaction that the investigation provoked amongst its own PP members and reinforced the hypothesis that internal politicking

was the motive behind the spying. In addition to the political investigations, the case has come before the courts and, up until the end of the year, it remained under investigation.

The second conflict that developed within the ranks of the PP during the course of 2009 concerned the renewal of the directorships of the *Caja Madrid*. In the previous year, the president of the Madrid region, Esperanza Aguirre, initiated a change in the law relating to the savings banks in the region. Her aim was to avoid the re-election of Miguel Blesa - who had the support of Rajoy and the PP mayor of Madrid, Ruiz-Gallardon - for a third term as head of the bank.<sup>19</sup> The law was challenged by the Madrid City Council who argued that the city council lost power in the re-organisation of the savings bank. The conflict exploded when the time came to decide who would be at the head of the fourth financial institution in Spain. Aguirre opted for one of her trusted men, Ignacio González, (vice-president of the region), while Rajoy defended the nomination of Rodrigo Rato. The public was left with an image of a divided party caught up in an on-going power struggle.

A political organisation that is constantly immersed in internal power-struggle runs the risk of being punished for it by the voters, especially the moderate sector which is much more sensitive to these divisions than other voters.<sup>20</sup> A divided party wastes a large part of its energy on in-fighting, and instead of mobilising the electorate and canvassing support<sup>21</sup> the militants are considered to be devoting too much time to local, provincial and regional struggles. It is feasible to conclude that the consequences of the internal

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<sup>19</sup> See: *El País*, 28.12.2008.

<sup>20</sup> See: José María Maravall (2008) "The political consequences of internal party democracy" and Ignacio Sánchez Cuenca (2008) "How can governments be accountable if voters vote ideologically?" in José María Maravall and Ignacio Sánchez Cuenca (Eds.) "Controlling governments: voters, institutions and accountability" New York, Cambridge University Press. Also Ignacio Urquiza (2009) "Moderate voters and internal party factionalism", lecture given at the *IX Congreso de la Asociación Española de Ciencia Política*.

<sup>21</sup> It has been empirically demonstrated that a heavy preponderance of militants in a group has a positive effect on the degree of party mobilisation. See: Clara Riba and Carles Boix (2000) "Las bases sociales y políticas de la abstención en las elecciones generales españolas: recursos individuales, movilización estratégica e instituciones electorales", *Revista Española de Investigaciones Sociológicas* 90, pp. 95-130.

divisions explain why the PP did not achieve an enormous electoral advantage over the PSOE in 2009.

### **The corruption scandals**

The second political affair that limited the strategic scope of the PP's opposition was the corruption scandals uncovered during the course of 2009 (and which are continuing in the first part of 2010), and in particular the *Gürtel Case* (see the Chapter devoted to Corruption in this Report). The importance of this scandal was not based solely on the amount of public funds which were embezzled, but on the number of leaders of the PP who were involved, such as Luis Bárcenas, the then treasurer of the party; Francisco Camps, president of the Valencia Region; Ricardo Costa, at that time the PP's second-in-command in Valencia, as well as various councillors from the Madrid regional government. The *FUNDESCAM Case* was another relevant corruption scandal; in May, the newspaper, *Público*, revealed that the PP had used a foundation linked to their party to finance electoral meetings. According to the newspaper, the PP had been using a parallel system of financing for the years 2003 and 2004 in order to pay for the costs of the '*tamayazo*' election.<sup>22</sup>

These two cases were the ones that had most impact in 2009, but they were not the only ones. The PP was not alone in that some of their mayors and councillors have ended up in prison, the same has occurred in other parties. The initial reaction of the conservatives was to accuse the courts and police of using 'double standards'.<sup>23</sup> On August 6<sup>th</sup> 2009, the general secretary of the PP, María Dolores de Cospedal, accused the Government, judges, and police of having created a "police state" that organised "illegal telephone tapping" with the sole intention of persecuting her party. One month later, the vice-secretary of the press, Esteban González Pons, reiterated the

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<sup>22</sup> In May 2003, the Madrid PSOE with *Izquierda Unida* managed to obtain one seat more than the PP in the Madrid regional parliament. This meant that, owing to an agreement between the two left parties, Rafael Simancas, of the PSOE, would become president of the Madrid region. But everything changed on the day of electing the president of the regional parliament when two regional MPs from the PSOE, Eduardo Tamayo and María Sáenz, refused to vote for the socialist candidate. The two politicians deserted their party. The situation was resolved by a repetition of the election, which meant that the PP gained an absolute victory in Madrid.

<sup>23</sup> See: the statements of Esteban González Pons on 08.08.2009 in: <http://www.pp.es>

accusation.<sup>24</sup> However, the data presented by the prosecution does not lend credence to this allegation. On November 18<sup>th</sup>, the Attorney General, appearing before the Parliament, gave a report about the on-going corruption cases against public officials. Of the 730 cases, 264 pertained to PSOE members and 200 to PP members. It would not, therefore, appear that the PP was more persecuted than the PSOE.

Apart from being a charge that did not hold water, perhaps the PP leaders were considering the electoral consequences of their strategy. A theory developed by Barreiro and Sanchez-Cuenca (2000) in their study on the electoral consequences of corruption in the nineties, suggests that the existence of corrupt practices does not normally have a direct electoral effect on parties. However, where the effect is felt is in the choice of strategy to deal with these practices. Thus, parties can deny them, minimise them, or respond to the allegations attributing them to political persecution. This led the authors to conclude that it was the reaction of the parties, “and not the corruption cases themselves, which made an impact on the vote (.....), corruption will have only a small effect on the electorate if the public believes that (the parties) have reacted appropriately, while it will have a significant effect if the public consider that (the party) has not faced up to the problem”.<sup>25</sup>

### **The weak leadership of Rajoy**

The third limitation on the oppositional strategy of the PP relates to the weak leadership of their president. Their electoral defeat in 2008 raised the question of his effectiveness. Although there was no clear alternative, groups close to the Madrid section of the PP, and some of the right-wing

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<sup>24</sup> See: <http://www.pp.es> in the section, *Actualidad y Noticias*.

<sup>25</sup> See: Belen Barreiro and Ignacio Sánchez-Cuenca (2000) “Las consecuencias electorales de la corrupción”, *Historia y Política* 4, p. 70

media aligned to them, advocated the desirability of replacing the leader of the PP.

An example of his weakness was given when the main leaders in the headquarters of the PP in *Calle Genoa* decided to react to the numerous reports involving Ricardo Costa, the number two in the web of corruption known as the *Gürtel Case*. Up until the last moment, the president of the Valencia Region, Francisco Camps, resisted the request of Rajoy to dismiss one of Camps most trusted men and his spokesman in the Valencian parliament. In fact, the hottest news stories of those days revealed a continuous game of deception and internal strife.<sup>26</sup> Finally, the criteria of *Calle Genoa* won the day, but once again the party's image and the confidence amongst the PP's leaders worsened.

The weakness of his leadership has had major consequences on Rajoy's ratings. Graph 5 presents the assessments of all opposition leaders between 1996 and 2009. Blue reflects the initial stage of José María Aznar in early 1996; Grey covers the time when Felipe González led the PSOE opposition until he was replaced by Joaquín Almunia (green line); half-way through the leadership of Almunia, Josep Borrell appears (brown line); some months of transition (black)<sup>27</sup> were followed by the 2000-2004 stage when Zapatero led the main alternative to the Government; finally, from 2004 onwards, the Graph presents the evaluations of Rajoy (blue). It can be observed that a leader of the opposition has never been so badly evaluated than when Rajoy has been the main conservative alternative. In fact, his average score has never reached 5. In addition, after the 2008 elections his public image has worsened: if, at the moment of the elections, the CIS survey rated him at 4.24, the poll of October 2009 put his score at 3.61.

#### **Graph 4**

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<sup>26</sup> See: *El País*, 14.10.2009 and 15.10.2009.

<sup>27</sup> These evaluations correspond to Manuel Chaves, who was president of the PSOE for some months while preparations were being made for the congress in which Zapatero was elected as general secretary.,

## Evaluation of the leaders of the opposition

Scale 1-10

Feb

Sept

April

Nov

June

Jan

Aug

Mar

Oct

May

Dec

July

..... (repeat)

*Source: Centro de Investigaciones Sociológicas*

On various occasions, the PP leaders have justified the low ratings of their leader by claiming that voters of rival parties have given him a very low score. Graph 6 presents the scores of Rajoy according to the interviewee's party allegiance. It is clear that the socialist voters have always awarded Rajoy a lower average score than PP voters. However, there is nothing unusual about that. The difference in scores according to voter allegiance also affects the other candidates. Furthermore, if the same scrutiny is made of Zapatero's ratings it can be observed that in the last two years the socialist voters have been more benevolent with Rajoy than the PP voters have been towards Zapatero, the President of the Government.<sup>28</sup>

The significance of this graph is that it shows that in recent years the rating of Rajoy has declined much more amongst his own followers than amongst the socialist voters. In April 2004, PP voters awarded him an average score

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<sup>28</sup> See: <http://www.debatecallejero.com> 08.10.2009.

of 7.38, while the socialist voters gave him a 3.86. Five years later, Rajoy gained an average of 5.59 from PP supporters, while the socialists gave him an average rating of 2.67. This means that while his average score declined by 1.19 points when assessed by PSOE voters, among his own voters the decline has been 1.79.

## **Graph 5**

### **Evaluation of Mariano Rajoy according to ultimate voting allegiance**

PP voters

PSOE voters

April

Aug

Dec

..... (repeat)

Source: *Centro de Investigaciones Sociológicas*

## **4. The electoral consequences of Government and opposition strategies**

### **The relationship between the economy and political behaviour**

One of the political consequences of the economic crisis has been that the PSOE has had to modify its attitude to government action. Thus, the recession forced the Government to put its legislative plans for the extension of civil rights on the back-burner and to make economic and social measures the hallmark of this new phase. This was no easy task given that the PP has traditionally held the advantage over the PSOE in terms of managing the economy.<sup>29</sup> But does this mean that if the dire economic results continue the PSOE will irremediably lose future elections?<sup>30</sup>

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<sup>29</sup> In April 2006, the CIS asked which party was most capable of managing various policy areas. It was in the economic area where most equality was visible between the parties: 34% chose the PSOE

Empirical evidence shows that a recession does not automatically lead to electoral defeat: there are governments that have managed to win elections in times of economic crisis. Crises do not always benefit the party in opposition, and by the same measure economic growth is no guarantee of remaining in power. As stated in IDE 2009, "it all depends on how the crisis is managed, whether decisions are taken, whether determination is demonstrated. In Spain, Felipe González won the 1993 elections amid a deepening crisis but lost in 1996 when the economy had recovered. Jacques Chirac in France in 1988, Schröder in Germany in 2002, Major in the UK in 1992, and 1997 all provide examples of losses in times of economic expansion and victories in times of crisis".<sup>31</sup>

There are several factors that determine the impact that the economy may have on a Government's electoral survival. One is that the ideology of the individual acts as a filter to soften or enhance economic perceptions.<sup>32</sup> That is to say: ideology determines the vote and, at the same time, conditions the way in which voters evaluate the state of the economy. In Maravall and Przeworski's words, "voters seem to decide, for whatever reason, to support the government or the opposition, and then choose arguments that justify their decision. Therefore, the causal relationship whereby the view on the economy decides an individual's vote has often operated in reverse".<sup>33</sup>

The opinion data of the CIS illustrate this argument. Its survey measures individuals' ideology on a scale of 1 to 10, where 1 represents the extreme

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and 32.5% the PP. In a pre-election survey of 2008 the CIS returned to the question of how things would have been if the PP had been in power. Once again, it was in the economic area where the PP received their best score, with hardly any difference between those who thought it would have been better or worse. This equality contrasted with the rest of the policy areas where the PSOE was the favoured party (See: IDE 2008, Chapter 2).

<sup>30</sup> That is, if we assume that voters use the elections to retrospectively evaluate Government action.

<sup>31</sup> See: IDE 2009 Madrid, (English webpage translation pp 55) Fundación Alternativas

<sup>32</sup> See: José María Maravall and Adam Przeworski (1999) "Reacciones políticas a la economía" *Revista Española de Investigaciones Sociológicas* 87, pp. 11-52

<sup>33</sup> *Idem*, pg. 50.

left and 10 represents the extreme right. The different values are grouped by the following categories: extreme left (1-2), left (3-4), centre left (5), centre right (6), right (7-8) and extreme right (9-10).

As can be observed in Graph 6, during 2009 the assessment of the economic situation by all groups of voters evolved according to changes in the unemployment rate, which has already been observed in aggregate for all citizens (see: Graphs 1, 2 and 3). However, the percentages vary slightly depending on each individual's ideological identity. Thus, those whose ideology is closer to that of the ruling party (the PSOE is normally placed at 4 on the ideological scale) have a higher assessment of the economic situation than those located in the more extreme positions, although the differences are not great. Ideology reflects the filter through which individuals view the economy. However, the ability of ideology to neutralise the effects of the economic situation is limited. The fact that over 60% of voters whose ideology is close to the Government's think that the economy is performing badly or very badly is an illustration of this.

It is worth focusing on the two groups of voters who have a less clear-cut ideological profile: those situated on the centre left (5) - who represent about 24% of the electorate - and those who define themselves as having "no ideology" that normally add up to about 20%. The first of these groups are particularly relevant given that the party that wins the election in Spain has always done so by winning the majority of the moderate votes. In contrast, those who declare themselves as having "no ideology" tend to support the governing party.<sup>34</sup> The rating of the economy between these two groups of voters has been that which has most worsened in 2009 (see: Graph 6). Furthermore, their percentages of negative scores were much closer to the scores awarded by the conservative voters than those of the progressive voters.

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<sup>34</sup> See: Ver Luis De la Calle, Álvaro Martínez y Lluís Orriols (2006) "How do voters vote when they have no ideology? Evidence from Spain", *Instituto Juan March*, Estudio / Working Paper 2006/227

## Graph 6

**Percentage of citizens who evaluate the economic situation as 'bad' or 'very bad' according to ideology**

Extreme left (1-2)

Left (3-4)

Centre left (5)

Centre right (6)

Right (7-8)

Extreme right (9-10)

No ideology

Percentage

Jan

Feb

March

April

May

June

July

Aug

Sept

Oct

Nov

Dec

Source: *Centro de Investigaciones Sociológicas*

These differences in the assessment of the economic situation are reflected in the evolution of voting intentions of the two major parties – Graphs 7 and 8. Thus, the PSOE's electoral support has fallen in all ideological groups. If a comparison is made between the beginning of the legislature and the end of 2009, it can be seen that the PSOE has lost 12.2 points from the extreme left, 13.19 points from the left, and 10.66 points from the moderates. In

addition, in October 2009, for the first time since Zapatero came to power, the PP has managed to overtake the PSOE in the two most relevant groups of voters for winning elections: those who are located at 5 in the ideological scale, and those who have no ideology.

### **Graph 7**

#### **Intention to vote for the PSOE according to ideology**

Extreme left (1-2)

Left (3-4)

Centre left (5)

No ideology

%

March

May

July

Sept

Nov

Jan

.... (repeat)

Source: *Centro de Investigacions Sociológicas*

### **Graph 8**

#### **Intention to vote for the PP according to ideology**

Centre left (5)

Centre right (6)

Right (7-8)

Extreme right (9-10)

No ideology

%

March  
June  
Sept  
Dec  
.... (repeat)

Source: *Centro de Investigaciones Sociológicas*

A second factor which can distort the relationship between the state of the economy and the survival of a government has to do with the attribution of responsibility for the crisis. Some domestic factors (labour market structure, the weight of construction in the productive system) can delay the exit from the crisis. But this time the crisis has been caused by the international financial system – an argument that the Government has often employed to off-load responsibility for the worsening economy. The public opinion data reflects this fact: 42% of people felt that the Government was ‘very responsible’ – a figure that was similar to that of those who blamed the international context (39%), compared with other factors such as the EU (33%), or business activity and employee performance (29%).<sup>35</sup>

Regional governments can also figure in the list of those responsible for the crisis.. These governments have broad powers in terms of the functioning of the economy in such areas as energy, trade and industry, and in the administration of the policies of the National Employment Institute (*INE*) in the field of labour, employment and training. If citizens attribute some of the responsibility to them for the state of the economy, then it is possible that the punishment of the electorate will not fall exclusively on central government. Although Spain has little data on the allocation of responsibility between different levels of government, the figures that do exist demonstrate that people attribute some degree of responsibility for the economic situation to

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<sup>35</sup> Barometer of the CIS, October 2008.

regional government.<sup>36</sup> The division of responsibilities between different levels of government is related to the degree of public visibility which each of them has and this can vary from region to region. These differences have electoral consequences: if national policies predominated over regional issues, the electoral future of the regional government can depend on factors beyond their control. However, regional politicians are not passive actors, and they can develop strategies to isolate or strengthen the influence of national politics on the electoral results in their territory. When the national government's electoral prospects are low, the regional governments of the same ideological persuasion attempt to isolate themselves and orientate their discourse towards purely regional issues. It is likely that the up-coming regional elections in Catalonia will provide a clear illustration of this strategy. Finally, although the responsibility for the economic situation was attributed to central Government, in order for this to result in an electoral defeat, the opposition will need to be seen as a credible alternative. The assessment of the main opposition party is another factor which may distort the relationship between poor economic performance and the electoral punishment meted out to central government. In this context the data has not been very encouraging for the PP during this legislature. Both in 2008 and 2009, 26% and 24% respectively of the electorate indicated that they would never vote for the PP.<sup>37</sup> The rejection is important because it has traditionally been concentrated in those regions (such as Catalonia and the Basque Country) which are crucial for the success of the socialists.

#### **4.2. The electoral balance of 2009**

The complex relationships between the economy and political behaviour can help to explain the electoral results of 2009. There were two regional

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<sup>36</sup> In a poll carried out by the *CIS* in 2007, the citizens in 5 regions were asked whether central government action and that of the regional government had had 'much' or little influence on the current economic situation. Only in one region, Catalonia, was the percentage of those who replied "much" or "somewhat" to central government influence higher than the influence allocated to the regional authority. In Galicia, Andalusia and Castille La Mancha the percentage between the two levels of government was almost identical, and in the Basque Country slightly more relevance was attributed to the regional government.

<sup>37</sup> Source: Opinion poll, October 2008 and October 2009 (*CIS*).

elections celebrated that year – in Galicia and the Basque Country – in addition to the European elections. In all three the political balance favoured the opposition. On one hand, the PP managed to regain power in Galicia after four years of a coalition government between the Galician socialist party and the *Bloque Nacionalista Gallego*. At the same time, although they lost an important part of their electorate in the Basque Country and the number of their regional parliamentary seats decreased, the result was determinant in introducing political change in the *Palacio de Ajuria Enea*, the Basque parliament. For the first time since the re-establishment of democracy, a non-nationalist politician was elected *Lehendakari*. The willingness to negotiate, especially on the part of the new leader of the Basque section of the PP - who showed much more moderation than his predecessors - helped to reinforce the image of moderation that Rajoy wanted to promote.

On the other hand, the PP won the European elections, something they had not achieved since 2000. Their voting advantage was 528,583 votes, 3.34%. Many of the progressive governments in Europe, unlike their conservative counterparts, suffered severe electoral defeat. Thus, while eight of the nine governments of the left lost the European elections, only five of the eighteen right-wing governments did so.<sup>38</sup> For many analysts these results were incomprehensible: they wondered how, in the midst of an economic crisis where progressive policies were being implemented in the majority of cases, this defeat of the left was possible.<sup>39</sup>

The European elections delivered some very relevant data regarding voting patterns for government and opposition in Spain. Both the 2008 general election and the European elections of 2009 revealed the progressive

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<sup>38</sup> See: Ignacio Urquizu (2009) "7-J: ¿unas elecciones en clave nacional?" *Claves de la Razón Práctica* 194, p. 55

<sup>39</sup> See: Antonio Estella, "Políticas de izquierdas, Gobiernos de derechas" (*El País*, 9-6-2009), Carlos Mulas y Luis Arroyo "Progresistas: una mayoría en minoría" (*El País*, 16-6-2009), Ludolfo Paramio "La paradoja de la socialdemocracia" (*El País*, 19-6-2009), Ignacio Urquizu "La izquierda necesita un relato" (*El País*, 20-6-2009) or Javier Moreno "Cómo arruinar el mundo dos veces" (*El País*, 21-6-2009)

territorialisation of electoral support for the PP and the PSOE.<sup>40</sup> While support for the former was concentrated in Madrid and Valencia, for the latter the most crucial support came from Andalusia, Catalonia and the Basque Country. Therefore, as mentioned earlier, the first organic changes made by Rajoy focused on improving their electoral competitiveness in Catalonia and the Basque Country, selecting leaders with more moderate profiles who would be more acceptable to the electorate.

The results of the European elections of June 2009 showed that the PSOE had lost support in their main strongholds. If a comparison is made between the PSOE's results in the European elections and those in the general election of 2008 it can be seen that their support fell by 10 points in the Basque Country, 9 points in Catalonia, and 4 in Andalusia. In addition, both in Madrid and Valencia, their support continued to decline. In contrast, the PP managed to increase its percentage of the vote in Catalonia and Andalusia and maintain its support in Madrid and Valencia. This signifies that territorial backing for the Government decreased enormously, while the PP managed to make some inroads in the socialist heartlands and retain voters' loyalty in Madrid and Valencia.<sup>41</sup>

The political balance sheet of the opposition is reflected in their future electoral expectations. As shown in Graph 9, by the end of 2009 the PP had managed to surpass the PSOE in direct voting intention for the first time since 2004. This result is a confirmation of the earlier analysis in which it was shown that the PP had gained the advantage in two key sectors of the electorate: the moderates (5 on the ideological scale) and those with no ideology. Furthermore, the PSOE lost a great deal of its traditional support. These changes explain why the party of Rajoy, at the end of 2009, could count on an electoral advantage – something which was reflected in all the public opinion polls published by the media.

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<sup>40</sup> See: Ignacio Urquizu (2008) "9-M: elecciones tras la crispación", *Claves de Razón Práctica* 181, pp. 48-57 e Ignacio Urquizu (2009) "7-J: ¿unas elecciones en clave nacional?" *Claves de la Razón Práctica* 194, p. 54-61

<sup>41</sup> See: Ignacio Urquizu (2009) "7-J: ¿unas elecciones en clave nacional?" *Claves de la Razón Práctica* 194, p. 57

## **Graph 9**

### **Direct voting intentions**

Percentage

April

Aug

Dec                    etc

Source: *Centro de Investigaciones Sociológicas*

## **Conclusions**

1. 2009 has presented many difficulties for both the Government and the opposition. The two major parties have faced distinct problems, but both have shared the same limitations on their ability to resolve them satisfactorily.
2. The main obstacle for the socialist party has been the economic crisis which has been especially virulent in Spain in terms of job losses. Government strategy this year has been a combination of measures of social protection and new recipes for modernising the productive apparatus. The social commitment of the Government has been undermined by their stubbornly optimistic discourse, which has consistently lagged behind the economic figures, and their vacillation over the instruments and objectives of some of their policies, such as tax reform.
3. The PP has been unable to resolve their leadership and internal party problems. In addition, these two issues have been compounded by the emergence of corruption cases which have affected important PP

leaders. Rajoy has had to confront enormous problems in imposing his authority.

4. Public opinion data has reflected deterioration in the evaluation of the socialist Government. However, this has not been matched by any clear electoral advantage for the PP. After the summer of 2009, opinion polls began to favour the conservatives, although these results would probably have been much more favourable if Rajoy's party had not been confronting so much internal conflict.
  
5. It would be too risky to conclude that the destinies of the Government and the opposition are already decided. Although the trends have changed to show the PP in the lead in the national and regional polls, the general elections are still too far away to predict the outcome. The results will depend largely on political decisions and strategies.

# 4

## Corruption: the bitter truth

### 1. Introduction

On 18<sup>th</sup> November 2009<sup>42</sup> the Chief Justice of Spain, Cándido Conde-Pumpido, appearing before the parliamentary justice committee to comment on political corruption, revealed that there were currently 730 cases of corruption under investigation by the Spanish courts according to the data gained from a review of relevant cases affecting elected or appointed public officials under suspicion of crimes committed while exercising their office. Of that number, 594 corresponded to judicial proceedings and 136 to investigation orders issued by the justice department. Currently there are 264 cases of legal proceedings or investigation involving socialists compared to 200 affecting the PP; members of other parties are also implicated in such cases.

Shortly afterwards, in a press release issued on December 10<sup>th</sup> 2009, the Interior Ministry contributed more interesting figures on the amount of police activity related to corruption which had taken place since 2004. According to the press release, the 232 operations involving corruption carried out by the national police force (*CNP*) since that date include the following: 131 cases of bribery; 6 cases of embezzlement; 48 cases of breach of trust; 32 cases of influence peddling; 31 cases of money-laundering, false statements and abuse of public office. During the following five years the greater part of police investigations and more than half of the arrests in a total of 560 cases have taken place in the provinces of Madrid, Malaga, Seville and the Balearic Islands. Over the same period specialised agents from the national

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<sup>42</sup> As requested by various Parliamentary groups, the Chief State Justice, Don Cándido Conde-Pumpido appeared before the Justice Committee of Parliament to comment on the Report on the activity of the State Justice Department 2008 (*Congreso de los Diputados, Sala Cánovas, 18<sup>th</sup> November 2009, 16.00h*).

and regional units under the command of the General Commission of Judicial Police have arrested 943 suspects and confiscated goods valued at more than 3,000m€. As an illustration of the increase it should be noted that in 2004 the anti-corruption unit only intervened in 104 cases, thus their investigations have more than doubled over the intervening five years. The *Cuerpo Nacional de Policía* (CNP), for its part, arrested 10 suspects in the 15 investigations carried out in 2004, but over the last five years they have greatly increased their operations against corruption as a consequence of the reinforcement of both human and material resources made available to the various specialised units. In 2009 alone they carried out 252 arrests in 54 separate operations.

This chapter of the Report on Spanish Democracy has a dual objective: the first is to advance the study of corruption by adding new data from 2009, approaching the task from a hybrid and synthetic methodological perspective. The second objective is to synthesise what we have learnt so far about high-level political corruption in Spain and to suggest some proposals to improve the system of combating and preventing it.

## **2. Accusations throughout Spain and perceptions of corruption**

This section will offer a review of some of the most important corruption investigations occurring during 2009, with particular attention paid to the most important one – the *Gürtel Case*, and will examine whether there are some common elements which might help to improve the understanding of the nature of this type of corruption and explain its variables. As some of these cases are still being investigated the data will necessarily be provisional and fragmentary, dependent on the final outcome of the investigations and the sentences delivered at the subsequent trials.

It is important to outline the methodology employed here. While not denying the value of an analysis of corruption based on regressive and correlating variables – especially where corrupt behaviour appears to be beyond the control of the individual, an preliminary attempt will be made in this study to

discover the type of environment that facilitates concrete corrupt practices, the strategies and procedures of those implicated, and the characteristics of those who succumb to corruption and of those who entice them into it (De Graaf and Huberts, 2008). Concretely, when imagining the motives which lead a person to act in a corrupt manner it is normally believed that the essential motivation is money. However, there are other important motives which are often not examined such as friendship, love, and even revenge for a situation which is considered unfair (Hollinger and Clark, 1983). In general, we believe that studies of corporative and white-collar crime (Croall, 2001; Vardi and Weitz, 2004) can help us to analyse this issue from a phenomenological perspective.

Still little is known about why corruption networks arise, how they are maintained, how they shut-down, who creates them, or what internal laws govern them. For example, although economic institutionalism can offer useful information it tends to ignore the sociological and psychological factors in human nature. It is for this reason that a multi-disciplinary approach is important; it reveals truly fascinating material about the theories of networks. Looking beyond the physical and mathematical explanations relating to the functioning of networks (Buchanan, 2002), it can be observed that human beings are connected to each other in both strong and weak forms (Granovetter, 1985). The strong form refers to the framework of networks or clusters in which we are socially imbedded and which have a very intense effect on how we behave. Thus, people hardly ever act in isolation to pursue their individual interests, but rather they act within a series of constrictive frameworks which are imposed by their social life. Horizontal relationships (family and friendships) include trust and cooperation, and vertical relationships (for example, in the workplace) include power and obedience. Both trust and obedience explain a great deal about behaviour, especially those actions which are more or less altruistic, or less egoistic. Our conduct is profoundly affected by our insertion into social networks. However, we also have weak links; that is to say that we know people that are outside our intimate circles, and these allow us to relate to thousands of others and, via a few intermediates, even to millions.

People within a particular cluster who have more 'external' relationships, tend to have more power and influence within their particular cluster, and are in turn connected with others who have more power and influence within other clusters. Eventually the 'old boy' networks, or networks of power and wealth, are formed which successively become more and more restricted. Putting all the theories together – economic institutionalism, network theory, and psychology – we hope to advance beyond the assumptions of one single vision of reality.

## 2.1. The Gürtel Case<sup>43</sup>

On November 6<sup>th</sup> 2007, José Luis Peñas Domingo, an ex-councillor of town planning for Majadahonda (Madrid), a municipality governed by the PP, visited the police - specifically the *Unidad Central de Delincuencia Económica y Fiscal (UDEF)* - to inform them about a series of incidents related to the activities of an organisation managed by Francisco Correa Sánchez, which suggested corrupt activity in various public administrations (which included the town councils of Majadahonda, Arganda del Rey, Pozuelo de Alarcón, Boadilla del Monte, and the regional governments of Madrid and Valencia), and subsequent money-laundering.

At the interview he had requested with the police, the informer, who until then had been part of the organisation, delivered a series of tape-recordings of various meetings involving the people running the organisation which, due to the trust placed in him by his manager, he had been able to record. In addition, he handed over other documentation (relating to people and their

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<sup>43</sup> The narration which follows is based on interviews with officers of the UDEF and on existing official information, and in particular, on the sentence of March 5<sup>th</sup> 2009 handed down by the Central Court of Instruction no. 5, the sentence of February 25<sup>th</sup> 2009, the sentence of March 5<sup>th</sup> of the same year and that of March 6<sup>th</sup>, all delivered by the same Court no. 5; the sentence of the Criminal Courtroom of the Supreme Court of Justice of Madrid delivered on June 23<sup>rd</sup>. 2009; the sentence delivered by the Civil and Criminal Courtroom of the Supreme Court of Justice of Madrid on September 28<sup>th</sup> 2009; and the sentence 60/09 of the Civil and Criminal Courtroom of the Supreme Court of Justice of Valencia. All personal opinions will be identified as such within this chapter and, above all, in the political analysis and conclusions.

positions within the organisation, the trading companies belonging to the conglomerate, etc.....).

From this moment on the *UDEF* began to collect data from various public sources in order to make an analysis of the information they had received and which had been resumed into an initial report accompanied by a recommendation for the affair to be investigated and specific measures to be taken. For reasons of legal authority, the document was delivered to the office of the Prosecutor for Corruption and Organised Crime where informative proceedings were instigated. From the tape-recordings they had been given and the data obtained it was possible to identify the activities of the organisation. These included acquiring public contracts by exploiting their relationships with public officials as well as via irregular conduct in the procedural process; mediating between the political authorities responsible for allocating town-planning projects and various construction companies; money-laundering operations via property deals; the use of company structures in fiscal havens; the production of false invoices; presents of goods or money to those in public political office; offering expert advice on creating money-laundering structures; the placement of their own people in public administration posts; the existence of 'black' money; recruiting nationally-important members of the PP into their organisation; the financing of a political group created by José Luis Peñas and Juan José Moreno for their own benefit, and so forth....

In August 2008, the Prosecutor presented a written accusation to the Central Court of Instruction no. 5 of the National Court (*Audiencia Nacional*) supported by the facts known up until that moment. The court of instruction gave permission for various investigatory methods to be employed, such as the tapping of telephone calls made by those chiefly responsible for the organisation. During the course of this action they were able to ascertain the existence of an organisation with an agreed purpose, a defined hierarchic structure, a single goal, agreed strategies of action, and control mechanisms which enabled it to create a company structure with an enormously specialised function. The organisation obtained its income from different

sources: the organisation of events for the PP and for local administrations governed by that party; public contracts and concessions, especially in areas where members of the network or their friends were in government; property speculation; and commissions from private companies for acquiring contracts for town-planning schemes and public contracts.

From the preliminary analysis of the documentation the police had been given, and in particular from the IT information discovered in the possession of the organisation's accountant, it was possible to gain access to the files where the parallel (*Caja B*) accounts had been annotated. In these hidden accounts it was discovered that a series of payments, in cash or kind, had been paid to political officials and high-ranking members of the PP. This confirmed the accusations of the informer and the information on the tape-recordings he had given to the police. On the basis of this information various reports were drawn-up relating the activities of Francisco Correa to public officials and people occupying positions of responsibility and/or decision-making within the PP. The magistrate of the court, presented with alleged evidence of criminal activity relating to people privileged with legal immunity, sent the case to the High Court of Justice (hereinafter: the *TSJ – Tribunal Superior de Justicia*) in the regions of Madrid and Valencia. In the case of the TSJ of Madrid, the court allowed the police authorities to enter the prison at Soto del Real and search the cells where Correa and Pablo Crespo Sabaris were being held. At the same time the magistrate produced a reasoned argument based on the evidence provided by the police to the magistrate of the Central Court of Instruction no. 5 for the case to be heard by the Supreme Court as a result of the evidence of alleged criminal activity on the part of three people enjoying parliamentary immunity (a member of the national parliament, a senator, and a member of the European parliament), and which consequently placed the case under the responsibility of the Supreme Court.

The TSJ, accepting the existence of the alleged evidence, pronounced in favour of this action for the abovementioned people and instigated proceedings. During the course of these, a request was made to both

parliamentary chambers relating to Luis Bárcenas (PP treasurer and senator) and Jesus Merino (National MP of the PP) which was granted by both the Congress of the Parliament and the Senate.

As a result of all this activity 90 people were charged in the affair. Of these 90, two from the regional government of Valencia enjoyed parliamentary immunity (Francisco Camps, president of the regional government, and Ricardo Costa, general secretary of the PP in Valencia and former spokesman of the PP in *El Corts Valencianes*), and three from the regional government of Madrid (Alberto López Viejo, Benjamín Martín Vasco, and Alfonso Bosch, where, according to the Court, there was evidence of bribery and peddling of influence). The list also included four ex-mayors from the Madrid region. Finally, during the course of the investigation a series of complications arose which were difficult to resolve and which could compromise the success of the case. These included the existence of a parallel case being heard by the Central Court of Instruction no. 1 in which the adviser to Correa, José Ramon Blanco Balín, was implicated and whose office had been entered and searched during the investigations of the UDEF; the fact that the case was being heard by three different judicial bodies although it referred to a single organisation which operated in three distinct places under a single management and with a unified form of action based on the control of public officials, and therefore the facts being investigated were the same and could not be separated; the lack of a decision by the court in charge of the case to adopt resolutions that allowed the facts under investigation to be proved; confusion over the role of the Tax Agency in helping the courts; media pressure placed on the judges and the investigators by the defendants' lawyers and the political party to which the defendants belonged (denouncing the *Sistema Integrado de Interceptación Telefónica - SITEL* - and the telephone intervention in the prison); accusations of leaking information relating to the case lodged by the PP against police officers and the instructing judge, Baltasar Garzón.

On October 29<sup>th</sup> 2009 the president of the PP, Mariano Rajoy, admitted to the press that his party had two major problems: one was the *Gürtel Case*

and the other was the tension in the Madrid section of the party. Some of this tension related to the replacement of the president of the *CajaMadrid*, but another part of it had been caused by the accusations of the deputy mayor of Madrid, Manuel Cobo, of being the subject of spying activity by security agents of the regional government of Madrid, and of the threat that he felt under because of it. This constituted another case involving abuse of power and the misuse of public funds for activities controlled by dissidents within the PP.

What becomes clear the more the *Gürtel* case is examined is that one of the keys to the process is linked to the credibility - or lack of credibility – of the accusation that the plot was hatched and consolidated as a means of financing the PP. If this accusation is proved, the next question will be whether this was known and accepted by the party leaders and, finally, how far the ramifications of the illegal financing reached. To date, it appears from the summary that solid evidence exists that the regional section of the Valencia PP was being illegally financed. In particular, and according to the court summary, some of the activities of the PP in Valencia were financed by company donations which were not entered in the current bank accounts of the party. These companies had on-going contracts, provided services, and completed works for the public administration in return for the money they paid towards the activities of the Valencia regional PP. In addition, telephone conversations have revealed that the PP itself, in the person of Ricardo Costa, acted as the conduit for payments made with 'black' money. This form of payment hid the real nature of the operation and made the economic activity of the PP opaque. The evidence shows that over a period of time this system of double-billing and irregular financing of the PP by Correa's group of companies - dedicated to events management (Special Events, SA; Orange Market, SL) – became a systematic part of the relations between the company and the political party.

It remains to be seen whether sufficient evidence exists in Madrid and Galicia to enable solid conclusions to be reached concerning the illegality of party financing. In any case, the charges in the case made against the PP

treasurer, Luis Bárcenas, and his later resignation from the post, should be a worrying factor not only for the PP but also for the reputation of Spanish democracy.

In line with the methodological criteria outlined earlier, it can be said that the present case is a true illustration of high-level corruption (Boehm and Lambsdorff, 2009), and reveals the implication of officials and political leaders at the highest levels of the institutions and the PP. As a result of this, the handling of the process has been plagued by attacks on the instructor of the investigations, accusations against the police, leaks of information on behalf of interested parties, sectarian positions being taken by the media, the closing of ranks inside the PP, accusations that the Government is behind the investigations and persecuting the PP (when, in fact, the affair was initiated by an accusation made from someone within the PP), etc. Currently, the career of one of the Spanish judges, Baltasar Garzón, highly-regarded internationally, is under serious threat precisely for having directed the investigation of the case with a firm hand and for refusing to be intimidated by the affected party and its media supporters.

It is possible that these corrupt activities are linked to party financing, but additionally there are clear signs of corruption at the bureaucratic level via the illegal allocation of public contracts. In particular, the fragmentation of contracts, the acquiring of the technical specifications of rival companies in the bidding for contracts, and other methods of defrauding the spirit and the letter of the regulating norms demonstrates that the functioning of the system of awarding public contracts in Madrid and Valencia needs to be improved. And, on another front, the charges brought against the mayors and councillors in the Madrid region resurrect the problems of corruption at local level and the difficulties of controlling this area of government.

The *Gürtel Case* is a typical example of the consolidation of a very opaque *cluster* with high entry and exit barriers. It is distinct from certain types of corruption found in developing countries where intermediaries publically offer their services, sometimes even within a competitive market (Husted,

1994). In the case under examination the crime is centrally managed, with a single purpose, and with various spheres of activity. The key to entry is personal connection, and there are clear hierarchical relationships and a strict monitoring and control system. As might be expected, agreements in this type of corruption are very precarious. In fact, since Mariano Rajoy took over as president, the central leadership of the PP appears to have begun breaking its links with the network, but the difficulties involved in such a move were unforeseeable. The corruption network had information and consolidated ties of trust and friendship with high-level officials of the PP (for example, Álvaro Pérez Alonso maintained a close relationship with top party officials such as Ricardo Costa, ex-general secretary of the PP in the Valencia region (*PPCV*) and a regional member of parliament; David Serra, deputy secretary of organisation for the *PPCV*; Yolanda García Santos, treasurer of the *PPCV* and also a regional member of parliament; and, in the regional government of Valencia, with people such as Vicente Rambla, deputy president of the parliament and a regional MP. Indeed the actual president of the Generalitat of Valencia, Francisco Camps, referred to Álvaro Pérez, 'el bigotes', as his 'amiguito del alma' - his soul-mate). They had also established an extensive system of payments and commissions: thus, the payments to party officials and some leading politicians included such people as Bárcenas, Jesus Merino, José Gerardo Galeote, López Viejo, Marín Vasco, Alfonso Bosch, Arturo González Panero, Jesús Sepúlveda, Ginés López Rodríguez, Tomás Martín Morales, José Galeote, Ricardo Galeote, Guillermo Ortega and Carlos Clemente. Furthermore, if someone tried to refuse to pay or attempted to renege on their promises, black-mail and threats were brought to bear. According to José Luis Peñas, the whistle-blower, "I was shown a video by Correa of the mayor of Boadilla, Alfonso Bosch - a regional parliamentarian, and another leading councillor sitting around a table with Correa. The mayor of Boadilla was counting money. Correa told me that he had recorded this video to protect himself and to blackmail the mayor".<sup>44</sup> After a while, the continuation and repetition of corrupt behaviour makes it difficult to eradicate.

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<sup>44</sup> *El País*, May 2<sup>nd</sup> 2009.

With this type of network there are very high entrance barriers in the sense that, at least at a certain level, a fairly sophisticated *savoir-faire* is needed. In these cases, rational calculation encourages the continued use of available *savoir-faire* (Boehm and Lambsdorff, 2009, p.49). Consequently, it is normal that over a period of time professional corrupters come into being - along with their string of lawyers - who must be watched and controlled if the fight against corruption is to be taken seriously. The corrupters have invested time and money in learning how to manage their businesses and they will try to make a return on their investment by numerous and lucrative acts of corruption. Correa designed a system that obliged him to make considerable investment in national and international lawyers in order to guarantee his whole system of money-laundering and the concealment of his ill-gotten gains. He also had to establish a system of bribes, rewards, and favours that enabled him to enjoy deferential treatment from the politicians and top officials that he dealt with. These included not simply the famous bespoke suits for Camps, but also trips, hotels, and even personal computers.

If we examine a typical corrupt contract using a time-line we can observe three different phases (Lambsdorff, 2002): the initiation of the agreement, culminating in the payment of a bribe or a non-monetary benefit, followed by the execution of the agreement, which in most cases terminates with the payment of a *quid pro quo*. Although at the moment there is no reliable information on how agreements with the top echelons of the PP were initiated, doubtless Correa and Pérez managed to insinuate themselves amongst the elite of the PP. The key to his acceptance was his friendship with the son-in-law of Aznar, Agag, and his attendance at social events connected with him (for example, Correa was one of the 24 witnesses at Agag's society wedding to Ana Aznar, the ex-president's daughter). The social circle of Agag - while not implying in any way that he was personally involved in the plot - was probably the sphere where the network started to take shape; Jacobo Gordon, a close friend of Agag and Alberto López Viejo (both charged) were also part of this circle; they all formed part of the 'clan Berricil', a group of 'beautiful people' and promising young businessmen of

the PP who were leading members of *Nuevas Generaciones*, and were backed by the ex-President, José María Aznar.<sup>45</sup> With Gordon, Correa managed to achieve one of his most lucrative property development deals in Majadahonda, where the then mayor was obliged to resign in February 2005. Correa had begun the construction of the *Residencial Mar Adriático*, a complex of 16 luxury homes on part of a site that had been bought for 750,000€ in January 2004, and which was resold by the original buyers six months later for 4.2m€, According to police reports, Correa had chosen Jacobo Gordon, head of *Proyecto Twain Jones* and *Consultoría y Gestión de Inversiones*, as his partner in this project.<sup>46</sup> Little by little, deals were being drawn-up within the framework of this 'cluster', and led to Correa becoming one of the main organisers of events for the PP for a period of years, and probably one of its financial backers.

The motives which lead people to join a corruption network are not solely economic (De Graaf and Huberts, 2008). Indeed, the wish for greater social status was very important to Correa. Perhaps others joined the ring because they thought that that was how things were done, and believed that Correa had the support of the leadership of the PP. Certainly, ties of obedience and party discipline may explain the action of someone such as Ricardo Costa. Friendship was a common thread throughout the network and the consolidation of ties of reciprocity might possibly explain the action of Camps. In some instances it was family ties which explained the presence of some of the people in the framework. In summary, simple economic calculation cannot on its own explain attitudes and behaviour.

The evidence that has come to light in Madrid and Valencia shows that the organisational environment where corruption develops is generally characterised by weak control and the adoption of a presumed '*entrepreneurial spirit*' within the public sector (De Graaf and Huberts, 2008). A rejection of the traditional work methods of the public sector and the search for flexible mechanisms to ensure a more efficient management are

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<sup>45</sup> *El Mundo*, February 11th 2009.

<sup>46</sup> *La Voz de Galicia*, October 10<sup>th</sup> 2009.

often correlated with the success of corruption networks. In brief, corporative culture and internal institutionalism are also influential in the possible appearance and consolidation of corruption (Villoria, 2007). Finally, it appears possible to deduce from this account that corrupt relationships are stable and long-lasting, and rely on years of friendship, shared private lives, and may even include friendships with other members of the family – as, for example, in the case of Álvaro Pérez and the wife of Camps. Within this framework the exchanges are open and there is no immediate connection between the act of corruption and that of payment, but rather that the corruptor does favours on the understanding that they will be returned (De Graaf and Huberts, 2008). It thus becomes difficult to uncover the *quid pro quo* arrangement that can prove that the receipt of a gift should be considered as a crime. This would explain the decision of the TSJ of Valencia to exonerate Camps from the accusation of receiving bribes.

## **2.2. The situation in the Balearic Islands**

On December 31st 2009, there were 21 cases of political corruption under investigation in the Balearics. However, for our purposes, they can be organised into two groups. In one group there are those which affect the *Unió Mallorquina (UM)*; and, in the other, those that appear to be linked to the last stages of the government of Juame Matas and which affect mainly the PP. Amongst the 21 cases it must be noted that there is one which has bearing on the PSOE, but because of its nature (the charges against the president of the *Consell de Ibiza*, the socialist Xicu Tarrés, for falsifying documents), dimensions and the evidence of the summary proceedings it is not convenient to consider it here as illustrative of the general conduct of the Balearic section of the PSOE.

At the time of writing there are 10 criminal cases in which institutions and councillors of the government of Matas are implicated, as well as PP mayors

who were supported by him.<sup>47</sup> Thus, there are up to 15 politicians of the PP, politically related to Matas, who have been charged and arrested. These include the ex-director general of territorial planning, the ex-mayor of Andratx, the mayor of Lluçmayor, the head of the electoral campaign of 2003 and ex-number two in the town hall of Palma, the director of the Council of Urban Development..... Those charged with crimes include the ex-councillor of commerce, industry and energy, the ex-councillor of tourism, the ex-councillor of the environment, the brother-in-law of Matas and ex-treasurer of the Balearics, and Matas himself. These cases illustrate an extremely worrying deterioration in public morality and political accountability in the regional government. For example, Antonio Ordinas, director of the Council of Regional Development, had 240,000€ of hot money buried in his garden in a cocoa tin, and the embezzlement which he and 24 others have been charged with amounts to more than 5m€. Damian Vidal, an expert witness appearing for the defendant Matas, in the case of alleged electronic spying on the opposition was named director of the Balearic company for innovation, *Bitel*, but he is now accused of embezzling 700,000€; 50,000€ was spent in a brothel using a town hall credit card by the company in charge of the infrastructures for the city of Palma; and the ex-manager of the funeral parlour of the city was charged and arrested for embezzlement, bribery and falsifying documents. In the Consortium of Tourism for Youth misappropriations were plotted, and they hired furniture back to the Consortium which already belonged to it. At least 7 people have been charged for these activities. In the *Instituto Balear de Turismo* a misappropriation of 90,000€ of public funds by of the ex-secretary of the institute is being investigated, as well as numerous suspicious contracts. The ex-councillor of Trade, Industry and Energy and ex-leader of the PP in Ibiza, is accused of embezzlement and of paying for the 2007 electoral pamphlets with money from his department. He is also accused, together with the ex-director general of industrial promotion - and within a part of the proceedings separated from the investigations of the corruption plotted by those in the Balearic Consortium of Economic Development (CDEIB) - of

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<sup>47</sup> For more details see, 'El sumario Matas' by Andreu Manresa published in *El País*, October 4<sup>th</sup> 2009.

prevarication, bribery, forbidden dealings and defrauding the administration. The nephew of Matas and ex-councillor of the PP accused Matas himself, together with the ex-councillor of tourism and the ex-spokesperson of the PP, of being implicated in the corruption scheme of the CDEIB.

Finally, the *Palma Arena* case is shaping-up to be the clearest expression of the lack of control and the greed of the Balearic administration. The indoor cycling stadium, that should have cost some 47m€, has actually cost more than double that amount, and yet did not receive approval from the *Unión Ciclista Internacional* because of various irregularities. 90% of the extra cost was not included in the official documents because it was not put out to tender;<sup>48</sup> the architects brought in to finish the project, after the first architect had been dismissed, were contracted arbitrarily and for the 'modest' fee of 9m€.<sup>49</sup> Up until the present, and amongst others, the following have been charged: the spokesperson of the PP in the town hall of Palma and ex-councillor for sport, the ex-director general for sport, the ex-director of the consortium for the construction of *Palma Arena*, and the actual ex-president of the Balearic government, Juame Matas. The Matas family tripled their patrimony in the space of five years: they bought a palace in Palma for a little less than a million euro when the real value was over 2.5m€ which, according to the judge, signified a gift of 1,527,550€ and, furthermore, 300,000€ of the price was paid in 'black' money; the cost of redecoration rose above half a million euro; Matas' wife spent 70,000€ on jewels and luxury items over four months.... The judge charged Matas and his wife with nine crimes: prevarication, embezzlement of public funds, misappropriation, falsifying of documents, traffic peddling, money-laundering, tax fraud, and election crimes.<sup>50</sup>

It is very surprising how a small party (*UM*) existing on one small island – Mallorca – can become not only the key to the governability of a region, but also, and at the same time, the source of constant political corruption

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<sup>48</sup> *EL País*, August 6<sup>th</sup> 2009.

<sup>49</sup> [www.rtve.es/noticias](http://www.rtve.es/noticias) 14.10.2009

<sup>50</sup> *El Mundo*, December 30th 2009.

scandals which until now were not adequately investigated. In fact, almost all the historical leadership of the PP in the Balearics has been charged including María Antonia Munar, the leader of the party and president of the Balearic parliament until her recent resignation (and ex-president of the Consell de Mallorca), Miquel Àngel Flaquer, president of UM and ex-councillor of the economy of the Balearic government, Bartomeu Vicens, ex-councillor of territorial planning and until recently a member of the Balearic parliament, Miquel Nadal, ex-deputy president of the Council, ex-president of the UM and ex-councillor of tourism in the Balearic government, Damià Nicolau, ex-general secretary of UM, .....

- The extremely serious charges made against them are the following.<sup>51</sup>

### ***CAN DOMENGE.***

The site of Can Domenge was sold for half of its value to the property developer, Sacresa, who already knew six months before the sale that they were to become its owners. The tender was eventually awarded for a maximum of 30m€ when the market price of the land amounted to 60m€ according to legal experts. In this case the following have been charged: former Councillor of Tourism for the Balearic Islands and former president of UM, Miquel Nadal; his successor in the presidency until his recent resignation from UM, Miquel Angel Flaquer; and Maria Antonia Munar, honorary president of UM.

### ***SON OMS and Operation Maquillaje***

The Gordian knot of this plot allegedly lies in the agreement signed by Bartomeu Vicens and Maximiliano Morales – politicians who were active in the UM in the nineties – with half a dozen property owners of Son Oms. In this agreement both of the former-named politicians received a commission of 15% - paid for in land - in exchange for persuading their party to re-zone a site of half a million square metres next to the La Palma airport of Son Sant Joan from rural use to industrial use. The re-zoning of a total of 60,000

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<sup>51</sup> See the information of Hugo Sáez in *El Mundo*, October 21<sup>st</sup>. 2009.

square metres valued between 50 and 60 million euro occurred in 1999 after being approved by Maria Antónia Munar who was his office colleague and, until March of that year, the president of the parliament; the lawyer, Montis, acting as an intermediary was also implicated. The parcel of land was recovered by Vicens during the years when he was Councillor of Territorial Planning and therefore the head of urban development for the island.<sup>52</sup> In this case, Miquel Nadal, Damiá Nicolau and at least twelve others have been charged in addition to Vicens, Morales, Flaquer and Munar. The case arising out of the so-called “*Operación Maquillaje*” shows the existence of a complex network of nominees and ‘front’ companies which the party employed to finance and enrich some of its members using money which flowed out of the public coffers via various contracts and subsidies. In particular, during the presentation of evidence, the ex-president of UM, Miquel Nadal, accused María Antonio Munar of having given him 300,000€ in ‘black’ money<sup>53</sup> to buy half of the two production companies which managed the local television station (*Video U and Bahía Difusión*), with the intention of controlling the image of their party. In accordance with the corrupt workings and patronage of the UM, these companies would receive fraudulent subsidies from the *Consell de Mallorca* and employ members of the party.<sup>54</sup>

### **CASO PEAJE**

In a letter to the judge investigating the so-called *Operación Peaje*, the anti-corruption prosecutor noted the need to determine whether the cost of building the road linking Palma and Manacor - which constituted the star project of the past legislation of the *Consell de Mallorca* under the presidency of Mariá Antonia Munar - had been inflated by 17m€ through the falsification of the number of work-units employed for its construction. All this had emerged when it was discovered that the director of roads for the *Consell de Mallorca* had used the public infrastructure company which had

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<sup>52</sup> *El Mundo*, October 18th 2008.

<sup>53</sup> See: *Diario de Mallorca*, February 29<sup>th</sup> 2010.

<sup>54</sup> See: Report, “*Confesión y vendetta balear*” of Luis Gómez and Andreu Manresa, *El País – Domingo*, March 7th 2010.

built the road for his own personal benefit. The prosecution maintained that he had used material left-over from the public work at some of the building sites which he owned in the locality of Manacor.

### ***El Plan territorial de Mallorca***

At the end of December 2004, the *Consell de Mallorca* gave final approval to the territorial plan for Mallorca. The plan included a parcel of land known as *Es Creuer* in the list of areas for direct re-zoning (*ARD*). The list had been drawn-up by the ex-councillor of territorial planning, Bartomeu Vicens, who had designated major re-zoning areas under the pretext of preserving other areas of Mallorca which, in his opinion and from an environmental point of view or because they were heavily degraded, needed to be rehabilitated. Six months before they were re-zoned, the estate – previously sold for 14m€ – was sold for 40m€ to a developer as rural land; after the re-zoning the estate's value rose to over 200m€. The key to the investigation was to discover whether the buyers of this and other estates included in the *ARD* were in possession of privileged information obtained through bribery. An ex-mayor of the PP has also been charged in this case.

There is no doubt that the many cases in which Matas and his subordinates and friends have been charged, as well as the cases involving the *UM*, demonstrate anew the existence of various schemes in which personal enrichment was mixed-up with the financing of the party and the absence of efficient controls. For example, the funding of the PP appears to have been directly implicated in these cases ever since Fernando Areal, brother-in-law of Matas, took-over as treasurer of the Balearic section of the PP. In this post he was in charge of the following: donations to the *Fundación Maura* which pertained to the PP, managing variable capital investment societies (*sicav*), and companies which were providing services to the Balearic government, paying the electoral expenses of the PP with 'black' money, and managing an important part of the payments Matas was incurring for his

own building works and investments. Interestingly, the architects of *Palma Arena* designed the PP headquarters in Palma.<sup>55</sup>

The *UM* case demonstrates how a small party, via a sophisticated network of exchanges and controls, can become an efficient instrument for enriching a group of politicians and their business associates. It is logical to assume that in order for this to occur there has to be an almost symmetrical division of the electorate into two big blocks, and this situation in Mallorca gave the small *UM* party the key to power. In addition, the insularity, the consolidation of historical networks of power and influence, and a working structure of patronage which meant that well-paid and influential public employment could be accessed through the party. The control of urban development on the island of Mallorca has been crucial for the party's economic and social sustainability, but it has also been the cause of the multitude of charges brought against it. The existence of an undisputed leadership also allowed the party to act in a disciplined manner and with a unified strategy.

Finally, it is important to emphasise that the regional administration of the Balearics has 185 instrumental bodies of diverse types. Amongst these bodies are 65 consortiums and 12 foundations which manage practically 70% of the regional government investment budget and are responsible for almost 50% of its borrowing. According to all the politicians and administrators interviewed,<sup>56</sup> the present control systems for these entities are clearly inadequate and therefore the projected law for regulating the public sector which the current government has designed is very important. Furthermore, the results achieved by the administration, according to the Audit Office itself and the General Comptroller of the Community, highlight the failure of the principles of sound economic and financial management (Amengual, 2009). It is within these instrumental entities that the major scandals of the Matas Government occurred.

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<sup>55</sup> “*El sumario Matas*”, Andreu Manresa, published in *El País*, October 4th 2009.

<sup>56</sup> Secretary General of the Ministry of the Presidency, Director of Community Advocacy (Legal Services), Auditor General Staff of the Trustee Audit Office.

## 2.3 The unexpected in Catalonia<sup>57</sup>

*Operación Pretoria* was based on anti-corruption investigations which once again showed that corruption, when it is political and high-level, is carried out by an organised group of people with internal and external connections, which in this case operated in Andorra, Switzerland, Gibraltar, Portugal, the Madeira Islands, and the Cayman Islands. According to the investigating judge, the group's main activities included making changes to urban development plans, the collection of commissions, kickbacks, fraud against the Treasury, fraud connected to EU grants, extortion and influence peddling among the members of the group, taking advantage of the institutional positions of some, the positions and political contacts of others, and the business activities of the rest. The unifying person in the group was Luis Andrés García Sáez, a businessman with close ties to the town hall administration of Santa Coloma de Gramenet.

- *Operación Pretoria*

The investigation uncovered three fraudulent planning schemes attributed to the network, although various others are under investigation and may lengthened the list of those charged. The three schemes are: the *operación Pallaresa*, which occurred in Santa Coloma de Gramenet over the period 2001 to 2005; *operación Badalona*, which occurred in Badalona between 2002 and 2004; and the *operación Niesma* which took place in San Andrés de Llavaneras (Barcelona) between 2003 and 2007. According to the judge the common elements of the three cases were: a) that the town halls involved in town planning projects awarded the contracts to a company connected to García Sáez who, through his connections with the councils in the affected localities and his relationships with business stakeholders, exercised favouritism in the transmission and execution of the work, and distributed illicit sums of money given to him by the stake-holders; b) that to ensure the effectiveness of the planned action, the company who had been

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<sup>57</sup> Bases on the Decree of October 30<sup>th</sup> 2009 *Diligencias Previas* 222/06. *Pieza separada Informe M.F. 20.09.07*

given the project never carried out the original work but delayed it until a modification to the development plan was approved by the *Generalitat's* Ministry of Public Works via the Barcelona Metropolitan Plan; c) that the modification always favoured the contracted companies and never the local council. Following the modification, the planning project was given to the construction company for a final price which was always much higher than the original one. Thus, all the profit stayed in the hands of the intermediaries - never the municipality that adjudicated the modifications - and these intermediaries received an undeserved commission for the acquisition of the urban re-zoning. The amounts of money involved in the main re-zoning operations examined (Badalona, Pallaresa and Niesma) and which were not paid into the municipal accounts came to 13,000,000€ (Pallaresa), 1,377,000€, 4,000,000€ and 12,377,000€ (San Andrés de Llavaneras), and 14,000,000€ (Badalona).

A curious factor of the Catalan conspiracy is the presence of people linked to different political parties and in particular to the two biggest Catalan parties: the *PSC* and the *CiU*. In the case of the Balearics, at a given moment members of distinct parties in the previous coalition government may have conspired together, but in Catalonia people from two separate parties which have never governed jointly were now acting in tandem. In fact, the *Pretoria Case*, for the moment, does not suggest that fraudulent party-funding mechanisms existed, but rather the presence of a network which had mutual enrichment as its objective, and in which each member performed a specific function. The members of *Convergència i Unió (CiU)*, Prenafeta and Alavedra obtained contracts from councils controlled by their own party, and with businessmen who were willing to offer bribes. It must not be forgotten that in the initial years of the corruption scheme the *CiU* were in power in the *Generalitat*; García Sáez was an ex-parliamentary member of the *PSC* and had good relationships with certain local councils controlled by the *PSC*, particularly in Santa Coloma. Working with these promising contacts, the key was to first find property developers who were willing to pay bribes, and then to start negotiations with the appropriate local officials.

The *Pretoria Case* is another typical example of the consolidation of a fairly opaque 'cluster' with restrictive access and exit. The plot had a centralised leadership, a single aim, and distinct areas of action. The key to entry lay in personal connections. Finally, the investment needed to set-up the operation and the construction of all the legal ramifications and necessary money-laundering for such a scheme to be profitable demanded continuity and maximum expansion. Probably various other cases will be added to the list of those which have already come to light.

### 3. Data on the perception of corruption

In principle, it is evident from the data on the perception of Spanish corruption, as measured by the Corruption Perception Index of Transparency International (IPC),<sup>58</sup> that the situation in this field has worsened over the last five years, and particularly during the last year (see Table 1) after a period of improvement that began in 1997 and reached its height in 2002 and 2004.

**Table 1**

#### **Spanish results according to the IPC of Transparency International 1995-2009**

##### **Points and % variation**

Points	Variation*	Ranking position	no. of countries
EU 15 position		EU 25 position	n <sup>o</sup> . of studies

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<sup>58</sup> The rating of the IPC corresponds to the perceptions of the degree of corruption according to how it is viewed by business and the analysts of each country. A score of 10 denotes high transparency and a 0 denotes a high degree of corruption.

\*Until 1999 the variation of the scores of the various studies used was measured using a typical deviation. From 2000 a range was used.

*Source: IPC, Transparency International*

This data is confirmed by the 2008 Special Euro Barometer 291 on corruption in which 83% of Spaniards surveyed considered corruption an important problem in our country. This Euro Barometer reflected a worrying fact: Spain, together with Italy, was the country with the greatest increase in the number of people who considered the problem important; it was particularly noteworthy that the number had increased by 10% since the autumn of 2005.

On the basis of a superficial glance at the figures, this would imply that Spanish corruption is on the increase. However, what the index expresses is simply what those interviewed think about the state of corruption in Spain based on their experience and what they have read and heard; which they rated at 6.1 in 2009. The data indicates that probably the scores awarded for the previous period were over-optimistic: in fact, the cases which are coming to light and the networks which are now being unravelled originated between 6 and 10 years ago. In short, and particularly during the last two years, there has been an adjustment in the perspective because of the large number of cases which have come to light. We can say, therefore, that adjustments are being made to an earlier perception based on insufficient knowledge which generated a false view of the phenomenon. Possibly, the successes of the courts, Civil Guard, and police, in conjunction with the end of the housing boom, are causing a real decline in corruption at the moment; but this will only become clear in a few years time when corruption cases arise, hopefully, with less frequency. If this is proven not to be the case and corruption becomes a recurrent problem, we will have to say that Spain has entered a consolidating phase of corruption which would be the start of a systematic and not exceptional trait. This would be an economic and social tragedy for the country.

Furthermore, the corruption which prompts these high scores is essentially high-level political corruption rather than corruption at the administrative level. To justify this claim we must examine the objective data on bribes paid in Spain. Table 2 shows that the number of bribes paid has remained very stable over the past few years. It cannot be claimed that administrative corruption has increased, i.e. the perception of corruption does not signify that the current Spanish administration demands more bribes than before to award public contracts.

**Table 2**

**Percentage of people in Spain admitting to accepting bribes in the last 12 months for the years 2004, 2005, 2006, 2007 and 2009**

%

Paid bribe

Not paid bribe

dk/na

*Source: Global barometer of corruption. Transparency International*

Figures relating to the payment of bribes for Spanish citizens in 2009 are very similar to those for bribes paid by citizens in the least corrupt European countries. Nonetheless, it is true that certain small differences of nuance exist relating to the areas where bribery occurs. Thus, according to those surveyed in Spain, bribes paid to the police are practically non-existent; bribes paid in the sectors of education, health, tax, and the courts hardly reach 2%, while bribes paid in the sectors of urban development and construction are just below 3%. This reinforces the idea that the area of urban development appears to be the favoured sector for Spanish corruption.<sup>59</sup>

We have arrived at a point where we can say that it is clear that Spanish corruption is mainly linked to the activity of politicians, especially in the field

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<sup>59</sup> See: Global Barometer on Corruption, Transparency International, 2009.

of urban development, local council administration and, to a large extent, to party funding. Consequently, it is not strange that in Spanish eyes local councils appear to be the most corrupt. Indeed, the same as occurs in Italy, but not France (see Table 3). In any case, all levels of governments in Spain have lost legitimacy since 2005.

**Table 3**

**Perception of corruption according to level of government**

%	local government	regional government	national government
Spain			
Comparison 2005-2008			
Italy			
Comparison 2005-2008			
France			
Comparison 2005-2008			

*Source: Especial Euro barometer 291, 2008.*

Neither is it surprising that political parties are viewed as the most corrupt (see Table 4).

**Table 4**

**Impact of corruption in different sectors and institutions in Spain 2005-2009**

..... 2009<sup>60</sup>

To what extent do you consider the following sectors in your country/region to be affected by corruption? (1: not corrupt; 5: very corrupt)

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<sup>60</sup> In 2009 only 6 categories were included. The sixth, which was new, was “civil servants/public employees”, which was awarded a score of 3.0.

Political parties  
Parliamentary/Council legislature  
Business/private sector  
Police  
Judicial/legal system  
The media  
Tax system  
Health service  
Education system  
Armed forces  
Civil service  
Registration and permit service  
NGOs  
Religious bodies

*Source: Global barometer on corruption, Transparency International*

This may also explain the surprising results of the last three CIS barometers of 2009. Specifically, corruption has come to be seen as among the most important problems for Spaniards, although ranked far below the economy and unemployment. Since March 1996 fewer people have mentioned corruption as being one of the three most important problems for Spain. For more than thirteen years corruption had never been cited as an important problem for more than 3% of those interviewed. But in November 2009<sup>61</sup> the figure for this category reached 10.4%, placing it above housing as one of the main problems in Spain. Nevertheless, corruption still fell far short of the 79% who listed the issue of unemployment and the 47% who mentioned economic problems. If another item is added which is intimately linked to the issue of corruption: that of 'politicians and political parties', the picture becomes even more vivid. By the end of 2009, the public considered that

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<sup>61</sup> *Barómetro de Noviembre*, Study no. 2,820, November 2009.

corrupt political activity was a major problem. This 2009 data had not been collected in a continuous form since March 1996. An overall study of the data leads to the conclusion that since the scandals at the end of 1993 – and its political repercussions in 1994 and 1995 – there has not been such a high degree of preoccupation about corruption in Spain as there is now. In any case, anxiety has not reached such high levels as existed then because, among other reasons, the Spanish Government does not appear to be implicated in the scandals.

In an excellent study, Barreiro and Sánchez-Cuenca (2000) used the data from 1994 to show that the assessment of Spanish voters on the manner in which their Government reacted to corruption scandals had an important influence on their voting intentions. Extrapolating from this study, we could also say that the manner in which the political parties react to corruption scandals which directly affect them will have an important influence on electoral results. For now, we have figures on how the Spanish view government action against corruption (Table 5). It can be observed from this data that in spite of Government's efforts and according to the reports previously cited, the perception of Government's effectiveness has been declining in recent years, although it still continues to be relatively well-rated in its fight against corruption.

### **Table 5**

#### **Evaluation of the government's fight against corruption**

Percentage

How would you evaluate your Government's reaction to corruption?

Very efficient

Efficient

Inefficient

Does not fight against corruption

Does not fight against corruption, but encourages it  
(DK/NA)

Spain 2006

Spain 2007

Spain 2009

Average of the EU 27 and other Western European countries in 2009

*Source: Global barometer on corruption 2009, Transparency International*

#### **4. Conclusions**

1. In general, corruption in Spain is closely linked to urban development and the allocation of contracts for public works; it occurs mainly in the political rather than the civil service sector, and has spread to local councils and to some extent to regional governments. Urban development and corruption in Spain has been amply covered by previous reports of Fundación Alternativas (Iglesias, 2007; Jiménez, 2007, 2008; La Puente, 2009). In the future it may be necessary to undertake a study of Government procurement; existing data indicates that despite legislative reforms and European pressure, there are still lacunae which are difficult to correct. The causes of widespread corruption in Spain are very complex. It should also be noted that the variables which explain corruption are also, in turn, explained by it: i.e. corruption can best be viewed as being caught-up in a vicious circle in which distinct variables produce corruption, and this corruption, in turn, leads to the expansion of the variables. Furthermore, in many cases the causality is barely understood. However, it is possible to say that there are some structural conditions that exist in almost all known cases of corruption. These conditions are those that generate the greatest incentives for corrupt behaviour. The best-known formula of the theory of institutional economy is the famous equation of corruption devised by Robert Klitgaard (1988),  $C=M+D-A$ . This means that corruption (C)

equals monopoly of decision (M) plus discretion (D) minus accountability (A). A large number of the cases described in this chapter fit perfectly into this equation. The result of this situation is a State which pays over the odds for its purchases and receives too little for its privatisations and for the allocation of concessions and permits (Rose-Ackerman, 2001, p. 51). Action to reduce decision-making monopolies and discretion and to improve controls will always lead to benefits in this field.

2. Normally, in cases of high-level corruption such as the *Gürtel case*, other causal factors exist and often include the demands of political party financing. This situation may originate from changes in political culture: the needs to remain constantly in the public eye and to publicise policies is generating ever-increasing campaign and party expenses. Another reason, profoundly structural, is the gradual separation between power and politics in today's world. This, Bauman (2001) argues, leads to the growing presence of private business in the political sphere. One of the most influential, damaging, and cost-effective forms of corruption is that of 'political capture', that is to say, control by large interest groups over particular areas of State policy in such a way that governments cannot – or frequently do not want to – formulate their own independent policies in this field. Until recently, urban development policy in Spain has been a prime example of this 'political capture' by large property-speculators. Lapuente (2009) suggested that an adequate reform at the institutional level would help Spain combat this problem. This might include, for example, changes to the norms regulating party funding; more limits on electoral spending; greater internal democracy within the parties and increased transparency; a higher degree of political independence for the bodies overseeing conflicts of interests and the incompatibilities of our politicians; a professionalization of public administration; a meritocratic civil service with a rigorous evaluation of performance; an improvement in the State regulatory capacity (not more rules, but less and better ones), etc.

3. However, that is not to say that we do not share the view that a poor quality of democracy, a widespread low level of inter-subjective trust, a low level of institutional trust, and cultural factors of various kinds are also responsible for Spanish corruption. Numerous studies show that the quality of democracy is linked not to mere electoral participation (there are countries with poor quality democracy *and* compulsory voting), but to open government and accountability, a clean and fair electoral system, and a democratically-structured civil society which is negatively correlated with corruption - more quality, less corruption (David Triesman, 2000). Spanish democracy has much work to do to improve the culture of transparency and accountability, and these improvements will probably substantially reduce corruption.

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# 5

## The Catalan Statute and the Persian Jurist

### 1. Introduction

At the end of 2009, the Constitutional Court had still failed to deliver its long-awaited ruling on the complaint of unconstitutionality brought on July 31<sup>st</sup> 2006 by the Parliamentary Group of the PP against the Organic Law 6/2006 proclaiming the Statute of Catalonia (July 19<sup>th</sup> 2006), and which later received other complaints of the same type lodged by other claimants. But over the years the debate in the media and the opposing positions taken by political actors regarding the anticipated Court ruling and the future of the Autonomous State have occupied centre stage (together with the related issue of the new system of distribution of resources between the autonomous regions, and the corresponding reform of the Organic Law on Regional Finance: LOFCA). The breadth, intensity and passion of this controversy, recurrent since the late nineteenth century, has certainly indicated that the solution to the territorial issue of Spain agreed by the constituents in 1978 has failed – at least for the moment – to resolve the problem. The formula in question guaranteed political autonomy to areas with deep-rooted nationalist movements leaning towards independence (Catalonia, the Basque

Country, and perhaps Galicia), and an advanced version of administrative decentralisation for the rest of the regions. The *sui generis* case of the former Kingdom of Navarre, with its contradictory legacy of Spanish purity and a 'foral' legal regime similar to that of the three Basque provinces, was deferred for the time being under the *Disposición Transitoria Cuarta* which provides for a dual referendum to decide on its inclusion as the fourth province of *Euskadi*. The heated polemic surrounding the denomination given to the autonomous regions according to their political autonomy or their administrative decentralisation also resulted in a compromise: while the latter would be called "regions" (a traditional term often coinciding with the old medieval kingdoms) the former would become known as "nationalities" – an imprecise term - that nationalists consider to denote a nation, as yet, without a state.

However, the solution given by the constituents to a festering problem with symbolic, political, ideological and emotional dimensions had the disadvantage that the ambiguous terminology did not resolve all the problems. The dictionary of the *Real Academia Española de la Lengua* (*DRAE*) defines the noun 'nationality' as "the status and unique character of peoples and individuals of a nation", or as "the proper state of a person born or naturalised in a nation" without any reference to a possible meaning of a nation without a state but with the right to have it. The definition of the adjective 'regional' – from the noun 'region' - as "belonging or relating to a region" creates no problems. But what would be the corresponding adjective for 'nationality': perhaps the artificial neologism '*nationalitarian*'? None of the first generation regional statutes has used so bizarre a word for their symbols, flags or anthems, and certainly the *DRAE* defines the adjective 'national' as "belonging or relating to a nation" or as "a nation's natural, as opposed to foreign, inhabitant" without mentioning, of course, nationalities. But common-sense and euphony do not favour a lax use of the word '*nationalitarian*'.

The general consensus in the *Cortes Constituyentes* on the necessity and justice that the languages of Catalan, Euskera and Gallego, each with their particular history, should be rescued from the limbo - or purgatory - inflicted on them by the Franco regime, resulted in their constitutional protection. "The wealth of the different linguistic modalities in Spain is part of the cultural heritage and will be given especial respect and protection" (Article 3.3). Only Castilian is mentioned explicitly and enshrined as the official language of the State ("all Spaniards have the duty to understand it and the right to use it"). The other languages are not mentioned by name but the Constitution declares them "official in their respective regions in accordance with their Statute". The obliged use of the Castilian language throughout the State was clear and explicit, even if the practical consequences of not fulfilling the ruling were left undefined by the Constitution. But the possibility that the other three Spanish languages – officially sharing the same status as the Castilian language in their respective regions – should, at some future date, also be made obligatory for their inhabitants by order of their regional charter was not formally excluded.

From the very beginning the new regional institutions - elected in Catalonia and the Basque Country on the 20<sup>th</sup> and the 9<sup>th</sup> of March 1980 respectively and both governed by nationalist parties - passed positive discrimination measures in favour of their own regional language. These measures were not only introduced to compensate for the marginalisation, and even persecution, inflicted on their use under the Franco regime, but also to counteract the advantageous condition occupied by Castilian which is spoken by the vast majority of the population (including a very high percentage of recent immigrants) and the fact that it is the hegemonic language of the media and the *lingua franca* for almost 500 million people world-wide. However, it sometimes happens that the beneficial effects of positive discrimination for a community (either in terms of language, as in this case, or gender, ethnicity or age, in others) may be experienced as negative discrimination by those who are prejudiced by it or inconvenienced by its

application (for example, when school is taught in a language other than their mother tongue). Only reasonable self-restraint on behalf of those who design discriminatory measures which favour a sector of the population and public information policies for those who feel threatened by an expectation wrongly interpreted as a right can relieve the tension in these potentially conflictive situations.

Public education (including religious schools and state-subsidised private schools) was the first testing-ground for relations between the official languages - Castilian and the so-called 'own' language of each particular region – within the regions, and was also the area where the first conflicts occurred. While the Basque Country created three different types of schools according to which language was used in the classrooms (Euskera – the basque language, Castilian, or a mixture of both), Catalonia inaugurated a system of Catalan immersion which employed Catalan as its basic language (except in two subjects). From the very beginning the newly-created public television and radio channels – or at least the main channel if there was more than one – broadcasted in their own language. In a media market dominated by Castilian in television, radio, books, magazines, and films the Catalan *Generalitat* attempted to compensate for their competitive disadvantage in the cultural field by granting subsidies. The nomenclature of cities, towns and geographic features regained their former Catalan names and were transferred as such to the official Castilian lists even when the reconverted terms applied to out-dated areas (such as Girona and Lleida) of the past. The obligation, under threat of fine, for Catalan trades-people to name and describe their commercial establishments in Catalan, although without prohibiting them from repeating the description in Castilian or another language, was an application of the same logic.

Regional autonomy has not been limited to guaranteeing and reinforcing the languages of Spanish nationalities: during the last three decades it has built up a solid institutional framework. This process has occurred not only in the Basque Country and Catalonia. As in the fable of the

tortoise and the hare the other territories of the Autonomous State, after receiving the transfers of responsibility for education and health, have made important strides (except in the question of their differentials) in widening their fields of competence. All the autonomous regional authorities have a parliament with legislative powers covering delegated areas of responsibility, a government led by a president with chancellor-like powers, a High Court of Justice, and their own administrative bureaucracy. They also have councils of state and regional ombudsmen. Only Catalonia and the Basque Country have their own special police forces (*los mossos de Escaudra* and *la ertzaintza*) who operate in coordination with the national *Cuerpo General de Policía* and the *Guardia Civil*. In 2009, by an amendment to the LOFCA, the tax revenues of 15 of the regions have been subjected to a new ruling aimed at increasing their share of the tax revenues collected by Central Government; the Basque Country and Navarra enjoy special treatment under an economic agreement which the other regions consider privileged. The foreign delegations of some of the regions conduct *para*-diplomatic functions on behalf of their territories. The results of this process are fraught with ambivalence: the resultant political and bureaucratic bodies form the possible 17 components of a future federal state of sovereign and independent states. The process of the large nation-states of the Modern Age in Spain, France, the UK, Germany and Italy followed the pattern of proto-states based on the characteristics of a dynastic kingdom that imposed its laws, administrations, armies, taxes, and language on the surrounding territories.

Nevertheless, this homogenisation of regional institutions and authorities - with the exceptional nature of the '*foral regime*', the police force and the language in the Basque Country, and the civil rights, the police force and the Catalan language in Catalonia - has had the perverse effect of making the hares, trapped by the tortoises, want to put further distance between them and their pursuers. After the failed attempt of the so-called *Plan Ibarretxe* and the new Statute of the Basque Country which was rejected by Parliament on February 2<sup>nd</sup> 2005 by 313 votes to 29, the

second reform cycle of regional government has remained in a state of limbo due to the appeal lodged with the Constitutional Court regarding the Catalan Statute.

Several circumstances favoured the beginning of this second cycle. The dissolution of the immutable frontiers in Helsinki in 1975 following the implosion of the USSR; the creation of 12 new states in the European sub-continent as a result of its geo-politico transformation, and the enlargement of the European Union from the 9 existing members in 1978 - when Spain was distanced from the European Community and debating its new Constitution – to 27 members (some of them microscopic in terms of their population and economy) without establishing a future *numerus clausus*, have altered the international horizon in favour of Basque and Catalan expectations. For all practical purposes this new situation, which was inconceivable and unimaginable in Europe at the time of Franco's death, is now a more or less definite possibility. Secondly, thirty years after their creation, the regional governments of Catalonia and the Basque Country are examples of the particular characteristics of proto-states: powerful bureaucracies; the use of indigenous languages as the common language for education and the media; taxation agreements (in the Basque Country) or taxation co-managed with central state finance; their own police forces; responsibilities for expansion; control over education and health; continuous growth; an external presence, etc. The gradual loss of social support and the decline in the potential firepower of ETA has presaged the demise of terrorist violence which for the last three decades has been officially considered the only obstacle in the path to democratic self-determination for those territories where there is a significant proportion in favour of independence and democracy. The conquest of the Basque autonomous government by the socialists with the support of the regional PP has not altered the constitutional and autonomous partnerships in *Euskadi*. However, the coming to power of the Catalan socialists in December 2003 has profoundly altered the political map of that region as

a result of pacts relating to statutory covenants with the nationalist parties, *CiU* and *ERC*.

## **2. Composite State, Integrated State, Federal State, Confederate State**

The underlying reason for the division in the Constitutional Tribunal and for their difficulty in reaching an internal consensus on the appeal lodged by the PP against the organic law relating to the Statute of Catalonia – which has been under deliberation with five draft decision pending at least up until April 2010 – was caused by the flaw contained in the original ruling of 1978 caused by the opposing attitudes maintained during the drafting of the territorial articulation of the democratic state by the ultra-centralist institutions left-over from the Franco dictatorship. As mentioned earlier, the debate finally ended in a legal and constitutional formula that tried to simultaneously satisfy the desire for state unity but also to give partial satisfaction to claims for Basque and Catalan nationalism. The result of the formula was a type of composite state similar to the integral state of the Second Republic and differentiated conceptually from a federal state by the granting of original sovereignty, not to the constituent parts, but to the resultant whole. At one extreme, the proposal to continue with a Franco-style regime camouflaged by regional customs was rejected; and at the other extreme the recognition of the right to self-determination which would open the door to the creation of a confederate state in the short to medium-term, or to the creation of independent territories for those that demanded them, was also discounted.

The compromise formula reached by the leading forces in the Constituent Assembly (UCD, PSOE, PCE, plus Catalan nationalists and the PNV), who wanted to arrive at a consensual agreement that was capable of approximating to both extreme positions and which also included a working project of institutional remodelling, was a dialectic articulation of the two extremes of the bi-polar tension: at one extreme,

the unity of the Spanish state; and at the other, the granting of autonomy to nationalities and regions. With this formula the regions seemed doomed to inherit an administration decentralisation that would progressively become more generalised until it extended throughout the entire territory while, at the same time, the issue of the number of territories and their frontiers was left unresolved. However, it appeared to assign a unique regime of political autonomy to the nationalities: although the Constitution did not expressly name them, it was clearly understood that this category corresponded to the territories characterised by a significant electoral presence of nationalism and by the precedent of having passed autonomy statutes during the Second Republic - clearly, Catalonia, the Basque Country and Galicia.

Since the enactment of the 1978 Constitution, the political forces that had agreed this difficult institutional balance on the territorial issue have attempted to improve the model. The brutal terrorist offensive by ETA, which assassinated 244 victims between 1978 and 1980, decisively conditioned and speeded-up the construction of Basque autonomy. The PNV, electorally hegemonic between 1980-2009, was the privileged partner of successive national Governments. These partnerships were motivated by the unfounded hope of central Governments that in return for this preferential treatment the PNV would prioritise the fight against ETA. In addition, the preventive influence of the higher State powers (the Armed Forces, senior administrative bodies, and the Crown) on the secessionist drift of the nationalist parties holding regional power (in the Basque Country and Catalonia since 1980 until the beginning of the 21<sup>st</sup> century) also contributed to the development of the harmonisation designed by the Constitution. And electoral rivalry between the UCD and the PSOE in Galicia and Andalusia meant that the process of constructing regional autonomy was manipulated in favour of party political interests.

Professor Pedro Cruz Vallalón – president of the Constitutional Tribunal (TC) between 1998 and 2001 –in a famous paper published in 1981 (“La

*estructura del Estado o la curiosidad del jurist persa*”) summarised the unclear outcome of the application of the main device designed to solve the territorial issue. A Persian lawyer, who lacked any information about Spain, decides to read the 1978 Constitution in order to learn about the structure of the Spanish State. However, he cannot arrive at a definite conclusion because the multiple threads in the text point alternatively to a centralised state, a federalised state, and a confederate state. His first impression is that he is dealing with a centralised single state, subject only to a certain degree of administrative decentralisation in favour of local bodies known as autonomies. But exercising this right of autonomy could initiate a process whose beginning was understood but whose end was indeterminate.

Thus, the supposedly synthesis reached during the drafting of the constitution has left an indelible mark on a project whose ultimate goal remains buried and dormant despite the intermittent truces called over the last three decades. It is true that Article 1.2 states that “National sovereignty belongs to the Spanish people” from whom the powers of the State emanate, and that Article 2 of the 1978 Constitution is founded on “the indissoluble unity of the Spanish nation”, redundantly defined to avert any possible doubt as to “the common and indivisible homeland of all the Spanish”. Having asserted this unity with superfluous rhetoric and flourish it then confirms, with less insistence, the corresponding parts: the Constitution also recognises and guarantees “the right of autonomy to the nationalities and regions”, but without defining or distinguishing either one or the other.

The inclusion of the term ‘nationalities’ in the text was a demand of the Catalan minority, and it was believed that this would, euphemistically, recognise the condition of Catalonia as a potential nation whose full realisation in an indefinite future was not assured but neither abandoned. The title of one of the seminal books on Catalan nationalism, “*Las nacionalidades*” by Prat de la Riva, supported the legitimacy of the chosen term. The word ‘nation’ and ‘nationality’ could correspond to the

academic distinction between 'political nation' ('nation-state') and the non-state 'cultural nation' tolerated by the UCD. Nevertheless, the neo-*franquista* formation, led by Manuel Fraga of the AP (which was fighting with the centralist UCD, led by Adolfo Suarez, over the hegemony of the right - the two parties finally merged into a re-founded PP in 1989 under the leadership of Aznar), fought against the inclusion of the term 'nationalities'; half of the parliamentary group of the AP did not vote in favour of the Constitution in 1978, and once the Constitution was finally approved, the elimination of such a dangerous word was one of the reasons why the followers of Fraga demanded constitutional reform.

However, the linkage between nationalities and regions in Article 2 does not reoccur in the Constitution. Also missing is a legal-constitutional definition of the term 'nationalities' to differentiate not only between nations but also between nation and region. Although the plural of the term seems to imply the existence of several territories on the same potential list, it neither indicates the number of nationalities nor names them. Furthermore, the right of nationalities (and regions) to autonomy - recognised and guaranteed by the Constitution – confers no right to promote such autonomy which, in reality, is reserved for provinces adjacent to each other sharing common historic, cultural and economic characteristics, for provinces with historic regional status, and also for the island territories (Article 143.1). The end result is that in the text of the Constitution there is no way to distinguish directly and explicitly between nationalities and regions.

For this reason the Constitutional Council devised a tortuous process of differentiation that awarded a speeded-up process for three regions (without specifically recognising their nationality) for the immediate implementation of the maximum powers authorised by the Constitution, at the margins of the exclusive State powers, and with an institutional design that on a local scale imitated the general parliamentary model laid out in Article 151 and 152. It was no coincidence, therefore, that these privileged regions would be those territories "where, in the past, the

plebiscite had approved projects for autonomy statutes (Second Transitional Provision)". 'The past' referred to was the Second Republic, and the regions with plebiscite projects were, unsurprisingly, Catalonia, the Basque Country, and Galicia.

The reference to the Republican past served as a pretext to describe various nationalities as 'historic' while, in reality, they were justified as nationalities because of the existence of well-rooted nationalist movements with tendencies towards independence (although, at the time of the Transition, the Catalan independence movement was largely insignificant); the lack of a definition of what constituted a 'broad, socially-based autonomy' was one of the keys to the transition in Catalonia where demands were made to restore the Republican statute of 1932. The reference to provinces 'with historic regional importance' to justify this dual classification in Article 138 of the Constitution made the attempt to appeal to the criterion of historicity even more indefensible.

The acrimonious competition between the Government of the UCD and the PSOE after the 1979 elections, which gave a second victory to the centrists, also meant that the artful procedural ploy invented to distinguish between nations and regions was untenable. Following the enactment of the statutes of Catalonia and the Basque Country, the status of the third nationality, Galicia, was for now ranked below the first two. Article 151 had laid-down three almost impossible conditions for moving onto the fast track without the aid of the *Disposición Transitoria Segunda* (Second Transitional Provision): the agreement of the councils in each affected province. This agreement had to be based on a favourable vote from three-quarters of the municipalities in each of the provinces, representing at least a majority of the total electoral census in each, and with a confirmatory referendum by a vote of an absolute majority of voters in each province. But this merely theoretical possibility eventually materialised in practice in Andalusia. Despite the boycott of the UCD Government, the PSOE backed the autonomy initiative under Article 151, and after the eight provinces of Andalusia and their

corresponding municipalities satisfied the requirements, seven out of the eight Andalusian provinces voted in favour in the referendum of February 28<sup>th</sup> 1980 (with only Almeria province voting against). Later, on November 11<sup>th</sup> 1980, a law designed by the socialists and the UCD acting in accord - which was not lodged for appeal before the Constitution despite its dubious nature - by-passed the obstacle of Almeria and allowed Andalusia to be incorporated into the list of the three nationalities mentioned in Article 151.

From that moment, the device designed to distinguish between the national and the regional powers and institutions began to crumble because it had initially been intended to award special treatment to Catalonia, the Basque Country and Galicia in order to stop the drift of the nationalist movements towards independence (which, in the Basque Country, had become violent). On August 10<sup>th</sup> 1982, the region of Valencia and the Canary Islands received many of the powers of autonomy established under Article 151 via the transfer and delegation of organic State law in keeping with Article 150.2 of the Constitution. Such an important differential factor for Catalonia and the Basque Country as language came to be shared with Valencia and the Balearic Islands (Catalan) and with Navarre (*Euskera*). The tax benefits and other types of historical rights of the three Basque Provinces guaranteed by the '*foral*' regime were extended to include Navarre. Although the period of five years established by Article 148 to progressively enhance the powers of the regions on the slow-track suffered continuous delays, the regional pacts signed by the socialist Government in 1992 with the re-founded PP opened the door to a transference of authority for education and health which was completed early in the 21<sup>st</sup>. century, and forced the reform of the statutes. Finally, the statutory reform was used by some regions (such as Asturias) to proclaim themselves nationalities.

But Basque nationalism (with the *Plan Ibarretxe*) and Catalan nationalism (in alliance with the socialists) – otherwise so different in their origins, strategies and recent behaviour – did not take this equalisation of power,

institutions and recognition lying down. In their view, the conciliatory formula of the Constitution of 1978 (a political nation whose sovereignty is exercised by the Spanish people and some cultural nationalities equipped with different political administrative autonomy in contrast with the administrative de-centralisation of the regions) was the outcome of a betrayal and a failure to honour the political pact.

### **3. The mechanism of approval**

How was it possible that the second round of regional reform began not only behind the back of the PP (in contrast to the agreement of 1992) but also in the face of their open hostility? The technical legal loop-hole which enabled the Zapatero Government to do without the support of the Popular Party in the reform/renewal of the Catalan Statute was provided by demand of a quorum and consequently required a unity of forces within both the Catalan *Generalidad* and the State Parliament. In neither of the two parliaments representing popular sovereignty - both of which were necessary for the Catalan statutory reform - was the collaboration of the main opposition party necessary. And President Zapatero took advantage of this situation for two reasons: firstly, because of the ideological commitment to a pluralist Spain made by the then president of the *Generalitat*, the socialist Pasqual Maragall, in defence of an asymmetrical federalism designed to overcome the existing dialectic between an unsatisfactory system of autonomy and rampant sovereignty which, in fact, amounted to errant opportunism directed towards converting the State of Autonomies into a lax asymmetrical federation whose ultimate goal was the confederation of Spain with Catalonia and the Basque Country; and, secondly, because it was a tactical move to mount a strong alliance of left and nationalist thus forcing the PP into isolation. But the President of the Government, Rodriguez Zapatero, newly arrived in power and with the strong conviction that in a deliberative democracy interests are always defeated by reason, and that individuals yield to the common good, did not anticipate the depth of the

disagreement which emerged within the ranks of the socialists towards the enormous statutory plan sent from the Catalan parliament in the autumn of 2005 to the State Parliament with the warning that not one single comma of the text should be changed.

The Catalan Statute passed in 1979 stipulated that the compliance of two thirds of the regional chamber was necessary in order to reform the text. After the November 2003 elections, the PP had 15 seats (11% of the total) in the regional parliament to oppose the chaotic alliance made up of socialists and nationalists in favour of the statutory reform proposal. In other regions, statutory reform required a qualified majority (two thirds in all autonomous regions except in Andalusia where the requirement was three fifths), and the PP were a necessary force to obtain an absolute majority (in the cases where the PP did not have the direct majority, which they had in Madrid, Valencia, Murcia, Castille and Leon, La Rioja, and Galicia). In the Basque Country only a simple majority was required. The new Statute of Catalonia was approved by an overwhelming majority of the regional parliament (89%), but with the Catalan PP voting against it.

And so we reach the second act of the drama. Once the statutory reforms were voted on by the autonomous parliaments, they were sent to the State Parliament for ratification. The approval for an organic law in the Congress requires an absolute majority – 176 MPs (this number of votes is needed to avoid a veto or amendments from the Senate) and it can confirm or correct the proposed text. During the previous legislature, the 164 socialist MPs needed to rely either on the help of the PP or on the support of other parliamentary minorities in order to obtain this absolute majority. The Government chose the second option, and the Statute of Catalonia was passed by an absolute majority in the Congress as well as the Senate without the votes of the PP.

The Government's decision to dispense with support from the PP – the second largest party at the national level between 1982 and 1996 as well

as during the 2004-2008 legislature – for the reform/renewal of the 1979 Statute of Catalonia not only broke with the precedent of the regional pacts of 1992 for increasing the competence threshold of the regions listed in Article 143 of the Constitution to the level of the most advanced regions. It also forced the socialist to count on the support of the nationalist and left parties, who were willing to lend their support in return for the greatest possible acceptance of their own demands. Moreover, the frontal attack strategy applied during the previous legislature by the PP - who were more determined than ever to use any means to recover the power they had lost in the elections of March 2004 after the terrorist bombings of M-11 - led them to add their criticisms of the reform of the Catalan Statute to those relating to the negotiations between the Government and ETA in order to formally accuse the socialists of promoting the breakup of Spain and the destruction of the State. The PP campaign, which included the proposal of an illegal referendum in Spain against the text of the Catalan statute, inflamed the latent stereotypical hostility to '*los catalanes*' – enflamed by the evanescent logic of the '*espíritu de los pueblos*' – which existed in the rest of Spain, including among significant segments of traditional socialist voters. The accusation launched against the Government that the reform of the Catalan Statute involved an illegal revision of the Constitution in order to circumvent the elevated quorum of three fifths or two thirds of the parliamentary chambers required by Section X of the basic ruling (a requisite which made an agreement with the PP unavoidable) and the subsequent holding of a confirmatory referendum, lost steam the moment the national and regional leadership of the PP proposed a reform of the statutes of Andalusia and the Valencia which headed in the same direction as that taken by Catalonia.

But the disagreement between the Government and the PP was not the only obstacle in the State Parliament standing in the way of the renewal of the statute sent to them by the Catalan parliament. Although, in November 2003 at a meeting in the *Palau Sant Jordi* during the Catalan electoral campaign, Zapatero promised to endorse the full text of the new

statute which had been adopted in the regional parliament, he was later unable to stand by the complete text approved by the regional assembly on September 30<sup>th</sup> 2005 due to the suspected unconstitutionality of some of its precepts, the discontent encouraged by the PP's campaign which was endorsed by sectors of socialist voters, and the prevailing climate of concern in other state institutions. The Government was forced to rethink their position of unconditional support and undertake negotiations with the tripartite coalition formed, on the one hand, by the Catalan socialists (*PSC*), the independence-leaning nationalist party (*ERC*), the coalition of the remains of the communist left and the Greens (*IU-Els Verds-ICV*) and, on the other hand, with the nationalist party (*CiU*) which had occupied the Government from 1980 to 2001. In addition to these auction-like double and parallel negotiations, there was a continuing battle with the PP who refused to present amendments to the text (which led to the resignation of the regional president of the Catalan PP, Josep Pique) and resorted to social mobilisation instead of parliamentary dialogue. The secret meeting on January 21<sup>st</sup> 2006 between President Zapatero and the leader of *Convergència y Unió (CiU)*, Artur Mas, prepared the script for the subsequent agreement, approved by a delegation from the Catalan parliament in the Constitutional Commission of the national Parliament (the peculiarity of this procedure is reserved for statutes dealt with under Article 151 of the Constitution), to be presented to the whole Chamber. The final text of the Statute of Catalonia, which modifies basic aspects of the original proposal from the Catalan parliament, was approved by 55% of the national Parliament and 51% of the Senate House. The subsequent referendum on ratification within the Catalan region recorded a 49% of participation and 73% of votes in favour.

The account of the circumstances surrounding the negotiating process of the new statute and the transmutation imposed on the original text on its way through Parliament helps to explain why the outcome of this tug-of-war between opposing forces appeared like a legal artefact from the laboratory of Frankenstein. The revised statute disappointed those who

had drafted the original version and which had been approved by the regional parliament (to the extent that *ERC* urged its followers to vote against it in the referendum), and did not change one iota the apocalyptic view of the PP, who filed a constitutional complaint on July 31<sup>st</sup> 2006 challenging no fewer than 114 articles in the text and all the while insisting on the irreparable consequences it could have on the unity of Spain and the Spanish State.

#### **4. The return of the territorial issue**

The long debate inside the Constitutional Tribunal, the delay on their ruling, and the difficulties experienced by the constitutional judges in reaching a majority decision over the Catalan Statute, indicates to some extent the return of the territorial question - a crucial problem for Spanish democracy – which, it was thought, had been resolved, or at least, in the process of being resolved, but which now appeared to have been resurrected. The confused Persian jurist invented by Pedro Cruz Villalón in 1981 had concluded, after studying the text approved in 1978, that Spanish law had de-constitutionalised the fundamental structure of the State and substituted it with a unified and centralised structure co-existing with a unified and de-centralised one: a mainly federal state co-existing with another with the trimmings of a confederated state. Nearly three decades later these uncertainties have still not been resolved, and moreover new ones have emerged with the start of the second cycle of statutes and the task of approving the Catalan Statute.

As we have seen, the distinction between nationalities and regions, mentioned only in Article 2 of the Constitution and obscurely implied in the *Disposición Transitoria Segunda* - considered essential by the Catalan nationalists as an endorsement of the fundamental law - was weakened when Andalusia acceded to the 'fast-track' via Article 150.2 which allowed the transfer, or delegation, of relevant State powers to the regions. It was further weakened by the homogenisation of institutions

and competences in favour of the autonomous regions on the 'slow-track'. On the symbolic level, there has been no lack of regions that refer to themselves as a nationality in their statutes, for example, Aragon, the Balearic Islands, and the Region of Valencia,

It was almost inevitable, and certainly predictable, that those regions that considered themselves as 'nationalities' but had been denied this label and lumped together with the other regions, wanted to reclaim the denomination of '*nations*' for their own exclusive use. In the historic and academic sphere, President Zapatero was correct when he said that the concept of '*nation*' is "arguable and controversial": the same word can have very different significance depending on the criteria being employed (language, territory, ethnicity, history, or the State). But the battle waged around the inclusion of the word '*nation*' in the Articles and preamble to the Catalan Statute had a political rather than an academic nature. It was argued that there had been an agreement between the nationalists and the centralists and socialists in the Constitutional Tribunal that the word '*nationality*' in Article 2 of the Constitution was reserved for Catalonia, the Basque Country and Galicia, and that because now the word had been contaminated by other regions invading this area there was no other remedy than to employ the term '*nation*' – loosely considered a synonym for '*nationality*'. However, this change clashed with terminology reserved for another area of the Constitution: Spain as the only nation in a legal and political sense. The extension of this polemic to include the already established use of the adjective '*national*' as applied to symbols, anthems, flags and festivals was, however, unjustified.

The debate on the Statute of Catalonia also raised the issue of bilateral relations between the *Generalitat* of Catalonia and the Government of Spain or, to put it more simply, between Catalonia and Spain - as if the first did not form part of the second and was entitled to a unique and privileged treatment compared with the rest of the regions. The confusion between the present reality of a population living in the geographic territory of a former principality with all its historical past, exemplified by

the language, architecture, customs, and cultures, can give rise to the myth of a unbroken lineage between the principalities and kingdoms of the Middle Ages and the autonomous political-administrative region of a state formed in the sixteenth century which continues seamlessly up to the arrival of democracy at the end of the twentieth century. The '*asymmetrical federalism*' advocated by the Catalan nationalists has been based on language (shared with the region of Valencia and the Balearic Islands), history (also shared with the Kingdom of Aragon and the Kingdom of Valencia) and the privilege of a bilateral relationship with the Spanish Government – with Spain – which, by contrast, has been denied to other regions who can also parade their equally valid past existence as kingdoms – Christian or Muslim – such as Asturias, Leon, Castille, Murcia, Cordoba and Granada. The construction of the United States began with the thirteen colonies that gained independence from Britain in 1776: Does Massachusetts or Virginia claim their right to asymmetry in relation to Mid-America or the Far West regions which became states during the nineteenth century?

The efforts of the Catalan Statute to usurp state powers via an interpretation of the legalities of the Constitution which favours their own interests seems at times to be overly complacent about sacrificing the qualitative conveniences of an improvement to the complex workings of a State with a federal vocation to mere quantitative criteria (the more competences the better). But the future of regional Spain, in turn part of an EU of 27 members, should not be conditioned by these battles over regional powers which threaten to destroy the whole regional edifice.

The Constitution Tribunal has already ruled on the citizens' rights recognised by the new 2006 Statute of the region of Valencia. And its judgement on this subject is difficult to interpret as being in any way discriminatory or a demonstration of a lack of solidarity towards other Spaniards. Hopefully, in the future, the ruling of the TC will give clear criteria for an understanding of the co-existence of two equally-obligatory languages within the same territory.

## Conclusions

While we wait for the ruling it is perhaps possible to establish some conclusions and formulate some expectations for the future.

1. It has become patently obvious that some persistent contradictory views on the territorial issue stem from the Constitutional Pact. Unfortunately, the syntheses formulated in it have not enabled it, up until the present, to resolve the original problems by opening up a new dynamic of convergence amongst the contentious political positions.
2. The tremendous transformations that have taken place over the last thirty years in the architecture, performance and reality of the Autonomous State have failed to reduce the complexity of contemporary territorial debate. These changes have also made it impossible to discuss the issue employing the same terminology and expectations of that particular constitutional moment. A new political reality, shaped by different times and distinct motives has consolidated a substantial equalisation of powers and institutions among the self-governing regions, which co-exist despite their varying circumstances, sheltered by the protection of the Constitution. But even with a similar legal and organisational structure many regions are still able to initiate dynamic policies and use a variety of symbols to express their own regional collectivism.
3. However, this complex State - materially federal, but with certain notoriety attached to its origins and the strength of its regional nationalisms – has a strong potential for instability. The centrifugal logic of the coordination and homogeneity which is necessary for the smooth functioning of a complex modern state must be contrasted with the regional variety of social ambitions and symbols of political

expression. As a consequence, although the direction of federal initiatives is generally towards greater uniformity, as long as the regions continue to clamour for the same or different privileges which the nationalities enjoy as their birthright, they are not responding adequately to the global logic of the State.

4. Even if a closer conformity to the constitutional design is achieved at some future date, it is very possible that attaining a greater synthesis with the political vision expressed in these pages will require more time and a more extensive shared history to broaden the mix of inherited ideas, experiences and cultures. In any event, it would seem much more reasonable to expect this to be the case than to place one's faith in the arrival of new and more adventurous legal and political territorial models or to rely on the success of the shared democratic experience that Spain returned to in 1978.
5. Of course, neither historical optimism nor individual good-will can serve as a guarantee that the process will not be de-railed. Equally, as the Spanish Government learnt during the latest round of statutory reforms, not even an improvement in the use of the established legal procedures nor the exercise of logic can serve as a safeguard to avoid succumbing to procedural pitfalls. The absence of widespread agreement on a general design, combined with highly opportunistic political behaviour across the whole political spectrum, has reawakened some of the more fundamentalist and latently-conflictive political projects that have been examined in this chapter. The provisional result of this has been undeniable political disaffection coupled with deteriorating social relations and the erosion of some prominent institutions within the constitutional system. Given all this, it would be irresponsible to continue along the same line or to damage the situation still further.

6. The ruling of the Constitution Tribunal on the Catalan Statute of Autonomy's conformity to the Constitution, approved by Parliament and ratified by a referendum of those living in Catalonia, is a long-awaited and necessary event for the inauguration of a new political era. Not only is it hoped that it will bring a satisfactory ending to an important political conflict but, even more importantly, that it will introduce the requisite legal stability that is necessary for Spain to continue on its unending historic path towards integrated and harmonious co-existence and practical political projects set within a framework of shared national origins. Although the two main conflicting currents want, at all cost, to eliminate any of the analytical confusion felt by the Persian lawyer, it may be more reasonable to let the lawyer continue with his doubts and reservations. There are good reasons for this: once the balance of victories and defeats afforded by the ruling of the constitutional arbitrators is made known and the ensuing tears have dried, the task of designing a shared future will continue to be as indispensable as ever.

# 6

## The state of justice

### 1. “Justice continues in recession”

This was the ironic way that *El País Semanal* entitled their section on justice in their summary of the most important news items of the year published in the last issue of the Sunday supplement in 2009. The article concluded by stating, “The Administration of justice has not recovered from the crisis, nor can any green shoots be detected on the horizon”. Indeed, the panorama of the Spanish legal system in recent months does not provide any reason to hope that there will be a significant improvement on the diagnosis formulated in the Report of Spanish Democracy, 2009. On October 8<sup>th</sup> 2009 there was a new strike by judges and magistrates – the second in less than a year – called this time by the mainly conservative *Asociación Profesional de la Magistratura, APM*, and supported by about a third of the legal profession. For its part, the General Council of Judicial Power (*CGPJ*), the governing body of the third power of the State, is once again showing clear signs of blockage, inaction, and internal tension, up to the point of being unsuccessful in approving the mandatory report on the reform of the abortion law, and unable to obtain the qualified majority necessary for appointing or renewing senior judicial posts. In addition, there have been complaints about the wheeling and dealing supposedly surrounding the appointments to the plenum of the *CGPJ* which, when not blocked and according to these complaints, normally characterises the transactions and exchanges between the two legal associations with majority representation on the Council (the *APM* and Judges for Democracy) to the obvious detriment of the principles of merit and ability, and also to the detriment of independent candidates and those from other legal associations.

In the same vein, the Constitutional Court has extended the long and frustrating wait for its ruling on the Statute of Autonomy for Catalonia by a further year, and has also delayed by another year the renewal of one third of its members, pending since late 2007. This has occurred in such a way that suggests that the partial renewal of the appointments made by the Senate and the Parliament have been deliberately blocked, which is in clear contradiction to the constitutional provisions. As if that were not enough, the rarefied judicial climate has been seasoned with constant news about the numerous complaints (of falsehood and/or corruption) that have been accumulating in the Criminal Division of the Supreme Court regarding the most famous – and no less controversial – of the Spanish judges, the chief judge of the Central Court of Instruction No. 5 of the *Audiencia Nacional*, Baltasar Garzón Real. Amongst the most serious of these accusations to have been admitted by the High Court are the following: firstly, the accusation made by a pseudo-syndicate of the extreme right concerning Garzón's handling of the case of people who disappeared during the Franco dictatorship (initially involving well-known cases of people who had been killed); secondly, the accusation based on the decision of Garzón to order the removal of a lawsuit filed against the president of the Banco Santander, Emilio Botín, who in the past had allegedly funded or sponsored some of the academic activities of Judge Garzón while he enjoyed a study leave in the United States; and thirdly, a lawsuit brought by the lawyer of one of the defendants in the *Gürtel Case* following the judge's authorisation of police intervention in the telephone calls made by the defendants from their prison cells to their lawyers, which supposedly breached the terms of authority set out in Article 51.2 of the General Penitentiary Law.<sup>62</sup>

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<sup>62</sup> In accordance with the cited legal precept, “*las comunicaciones de los internos con el abogado defensor o con el abogado expresamente llamado en relación con asuntos penales y con los procuradores que lo representen, se celebrarán en departamentos apropiados y no podrán ser suspendidas o intervenidas salvo por orden de la autoridad judicial y en los supuestos de terrorismo*”.

In this context (and with a similar background) another event occurred which offers a vivid illustration of the deep malaise that permeates the judiciary: in early January 2010, a group of judges and magistrates, some of them members of the five existing professional associations, circulated a manifesto via the corporate intranet of the judiciary entitled, “Platform for judicial independence and de-politicisation” which was apparently signed by over two hundred members of the legal profession within 48 hours.<sup>63</sup> In this manifesto mentioned was made of the “regrettable historical process of political pollution and degradation of the independence of the judiciary” which, according to its authors, “has almost always enjoyed the silent complicity – if not the express collaboration – of the members of the *CGPJ*”.

A fairly reliable picture of the regrettable situation that has befallen the legal profession and given rise to the convulsive climate that it is currently experiencing is afforded by the results of the recent elections to the governing councils of the Supreme Court, the *Audiencia Nacional*, and the High Courts of Justice which took place last autumn. Significantly, in this election both of the professional associations (*APM* and Judges for Democracy) linked to the two major political parties (PP and PSOE) suffered major setbacks, while the representation of non-associated judges and magistrates substantially increased; in addition, the two associations holding moderate positions and with less affinity to mainstream political parties (Judicial Association Francisco de Vitoria Forum: *AJFV*, and the *FJI*: Independent Judicial Forum)<sup>64</sup> maintained their previous support. Nevertheless, the conservative association (*APM*), although losing 26 seats on the governing councils, dropping from 79 to 53 out of a total of 117, retained a weakened majority. The second largest group was made up of the non-aligned judges and magistrates with 23 seats. The third and fourth positions were occupied, respectively, by the moderate *AJFV* (21 seats) and the *FJI* (11 seats),

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<sup>63</sup> See the supplement “*Jurídico* of the newspaper, *Expansión*, January 19<sup>th</sup> 2010, page 35. In their edition of January 29<sup>th</sup> 2010 (p.15) *El País*, stated that the said manifesto had received 500 signatures from the various associations.

<sup>64</sup> See the supplement *Jurídico* of *Expansion*, December 1st. 2009, page 41.

which relegated the progressive association, Judges for Democracy, to the bottom place, with only 9 seats.

### **1.1. The CGPJ returns to its old ways**

As already noted, the institutional and constructive atmosphere characterising the early stages of the workings of the new CGPJ members elected in September 2008 (offering a healthy and long-awaited respite from the tense and degrading behaviour of the previous Council), has very evidently broken-down in recent months. The first alarm sounded last summer on the occasion of the publication of the mandatory report of the CGPJ on the reform of the abortion law. Within the Council the content of the report had been very controversial due to diverging opinions on the constitutionality of the reform. The members were at odds over the reform's compatibility with the basic right to life (Article 15 of the Constitution), and more precisely with the criteria of the jurisprudence of the Constitutional Court in the eighties which had ruled on the constitutionality of the de-penalisation of abortion (STC 53/1985, April 11<sup>th</sup>). While the Council's Committee on Studies and Reports had approved a proposal not to challenge the constitutionality of the reform by a majority of three votes to two, the two dissenting members published their own opinion which contained an alternative draft proposal which did question the constitutionality. The Plenum of the Council discussed both proposals without reaching agreement on either one. The draft report sent by the Committee on Studies and Reports received 10 out of 21 votes of the vote in the Plenum (those of the nine progressive members and that of the member elected by the PNV, who had been the sponsor of the Committee's report), which happened to be exactly the same as the number of votes which the alternative report presented by the two conservative members had obtained (those voting in favour of this alternative report included the nine conservative members and the president of the Council who was well-known for his deep catholic convictions). In both cases the repeated abstention of the member elected by the *CiU* prevented the CPGJ reaching the majority needed for

the approval of either report. In the end the Council was put in the uncomfortable position of informing the Government that it was not able to deliver the mandatory report within the designated time limit.

Moreover, the new Council had begun to repeat the deadlock over the appointment of senior judicial posts, the most important of which, according to a reform of the Judicial Power Organisation Act adopted at the start of the 2004 socialist legislature, required a qualified majority of three fifths (13 votes out of 21). Both in the previous and the current Council the requirement of such a majority necessarily demanded the consensus of the two largest blocks of members; given that each of the blocks was formed of nine members, it was impossible for either of them to attain the 13 votes even with the joint backing of the two other members elected by the *CiU* and the *PNV*.

At the beginning of 2010 the renewal and/or appointment of members remained pending. These vacancies were caused by the ending of the mandate on various posts or because of unfilled vacancies, amongst which were the following: five Supreme Court justices (one for each of the five Courts); three Chief Justices of High Courts (Catalonia, the Basque Country, and the region of Valencia); and other presidencies of Provincial Courts (Valencia, Leon and the Balearics). This lack of agreement, which continues to effect and delay some of the other appointments, centred particularly on appointments to the High Courts of Catalonia, the Basque Country and Valencia, all headed by conservative judges associated with the *APM*. The latter two were also especially controversial in political terms: the president of the High Court of the Basque Country, Fernando Ruiz Piñeiro, had once voted in favour of bringing to trial the former and the current *lehendakari* for having maintained talks with leaders of the outlawed *Batasuna* during the peace process (the case was later rejected by the Division of the Court of Criminal Justice which concluded, naturally, that this conduct was not criminal). In his turn, the president of the High Court of Valencia, Juan Luis de la Rúa, was politically controversial because of his alleged ties of

friendship with the president of the *Generalitat Valenciana*, Francisco Camps, although this did not prevent him from casting his deciding vote against opening proceedings against Camps for allegedly receiving bribes, stemming from the acceptance of gifts in the *Gürtel* corruption case.

The most controversial appointments once again floundered at the CGPJ meeting celebrated on January 28<sup>th</sup> 2010 due to a lack of agreement between the two blocks of members, preventing any candidate from gaining the necessary 13 votes during the subsequent election. This occurred in the case of the three presidencies of the High Courts, and the appointment for the vacancy on the Council of Criminal Justice. Thus, the CGPJ will have to re-advertise the vacancies and repeat the entire selection process, prolonging by at least various months the existing temporary situation in the aforementioned courts. This has allowed the acting president of the High Court of Valencia, de la Rúa, whose intervention in dismissing the case against Francisco Camps for alleged receipt of bribes has already aroused great suspicion, to participate in the decision of admitting a lawsuit filed by the Valencia socialists against 17 top officials of the region (including the regional president, Francisco Camps) for the alleged illegal funding of the PP. For now, this issue has resulted in the Valencia Civil and Criminal Court of the TSJ being declared incompetent to try the case.

In addition, during the uneasiness caused by the blocking of so many judicial appointments by the CGPJ, in February 2010 a scandal erupted over the horse-trading supposedly affecting the vast majority of these appointments.<sup>65</sup> *El País* was the first to disclose that a member of the CGPJ from the progressive sector, Margarita Robles, had sent a letter to the governing body of the association, the *JpD* that in its day had proposed her appointment, 'bragging' about the large number of judges belonging to the *JpD* who had been appointed to high judicial positions

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<sup>65</sup> See *El País*, February 23rd 2010, pg. 11; also February 24th, pg. 10 and following; and the editorial of *El País* on February 25<sup>th</sup>, pg.26.

since the beginning of the mandate of the current Council in October 2008. The shock caused by such a disclosure increased still further when it was learnt that another member (also aligned with the progressive sector of the *CGPJ*, but from academia), José Gomez Benito, made public his resignation from the Qualifications Committee (later rejected by the plenum of the *CGPJ*) which was responsible for proposing to the plenum of the Council the short-listed candidates for high-level posts, alleging that the appointments were usually agreed 'behind the back' of the Qualifications Committee by the blocks of members belonging to the two judicial associations with majority representation in the *CGPJ* (*APM* and *JpD*), and without strict regard to the principles of merit and ability. The members referred to by the complaint vociferously rejected the accusation and branded it as mendacious (demonstrating the convulsive climate of internal tensions which once again was characterising the *CGPJ*), and a few members suggested that the accusation had been formulated (and amplified by certain media) with the underlying aim of besmirching the image of a member of the Standing Committee of the *CGPJ* supposedly in favour of the provisional suspension of Judge Garzón after the Criminal Chamber of the High Court had admitted for trial the three lawsuits against him.

## **1.2. The situation of the Constitutional Court: nihil sub sole novum**

The situation of the supreme interpretive body of the Constitution remains, once again, unchanged. At the time of writing (March 2010), the most long-awaited decision of this institution since it came into existence – the ruling on the constitutionality of the Statute of Autonomy of Catalonia – has still not been agreed. It is true that since last autumn there have been incessant rumours about its imminent adoption, but so far they appear groundless because the verdict is still unannounced. Apparently the judges of the Constitutional Court (*TC*) do not have the necessary consensus which would allow them to pass a judgement based on a solid majority. According to the constant rumours and leaks

regarding their deliberations echoed in the media, one of the highly symbolic aspects of the draft which is causing controversy within the Court is the question of the constitutionality of the reference to the Catalan nation that is contained in the preamble of the Statute.

Meanwhile, the temporary nature of the situation of the four judges of the TC, including the president who was originally appointed by the Senate, has been prolonged into a second year. It is unknown what efforts the TC is making to fulfil its constitutional obligation to renew the vacancies that these judges have left, as it is also unknown what steps Parliament could take in order to fill the vacancy which corresponds to the gap left by the death of the judge, Roberto García Calvo, in May 2008. The delay caused by both Houses exacerbates the decline of the image and prestige of the institution. It has reached such a point that in recent months voices have increased especially, but not exclusively, in the more radical field of Catalan nationalism openly questioning the legitimacy of the TC to rule on the validity of the Statute, considering it an 'outdated' and 'politicised' Tribunal, that in their opinion should not be allowed to impose its views on a bill endorsed by the people.

### **1.3. The reform of the judicial office**

As a counterpoint to the facts outlined above, it is worth mentioning the adoption and entry into force of the law 13/2009 of November 3<sup>rd</sup> which reformed the procedural law for the implementation of the new judicial office, and the Organic Law 1/2009, also of November 3<sup>rd</sup> and supplementary to the above, amending the Organic Law of Judicial Power. While prevailing opinion seems to underline the crucial importance of this broad legislative package for the modernisation of Spanish justice, there has been no lack of hostile criticism. Thus, the aforementioned manifesto sponsored by the Platform for the depoliticisation and judicial independence believes that this reform, which certainly strengthens the authority of the court clerks, "may be one more (cryptic, but with unpredictable consequences) step of the Government in

its insatiable desire to control and dominate the already debilitated sphere of judicial power” via the affect some of the new functions transferred to the court clerks will have, according to its sponsors, on the core of the strictly judicial area, particularly in reference to trial assignments.

With the law 13/2009, a wide-reaching reform was imposed on procedural legislation to facilitate the implementation of the new Judicial Office. The objective was evident in the first lines of the preamble that precedes the body of the Act: to make effective the right of citizens to enjoy “a public service of agile, transparent, accountable justice in full accordance with constitutional values”. To this end there was a firm commitment that the work of judges and magistrates would be concentrated on their strictly juridical functions to make and enforce judgements, leaving the rest of the organisational tasks to the main auxiliary branch of the judiciary, the Judicial Office.

Therefore, the role of a figure traditionally not efficiently used in our justice administration, the court clerks, has been strengthened. In contrast to the subordinate and somewhat marginal position that these officials had come to occupy in the organisation of Spanish justice which largely limited them to acting as certifying authorities and the preparation of purely formal resolutions, the new law takes their position of technicians of law seriously – awarding them power to lend direct support to the exercise of juridical authority – which will ultimately lead to their conversion into the senior management of the administration of justice and transform them into the backbone of the new Judicial Office. The powers now vested in the clerks, although not involving the exercise of judicial power, have great relevance for the effectiveness of justice. It is planned that the clerks will be responsible for the admission of claims at the beginning of the judicial process, with the sole exception of criminal proceedings where decision-making, as far as it relates to certain basic citizens’ rights, is still the reserve of judges and magistrates. The court clerks will also decide on the termination of court proceedings in cases

where the termination does not occur by sentence, as can happen if a partial agreement is reached between the parties, or if one party withdraws. Finally, and by no means least, the new regulation gives an important role to the clerks in the execution of judgements, hoping that it will result in an alleviation of one of the major defects facing our judicial system: that of the actual implementation of the courts decisions.

In addition to strengthening the position of court clerks within the organisation of judicial administration, the law is committed to the development of guarantees for citizens, in as far as they are “judicially justifiable”. Advances in information technology (the widespread recording of oral hearings, the extension of computer records, electronic and computer media advertising, etc) will be employed to put all this into practice; “best practice processes” will be promoted (encouraging the amalgamation of actions to reduce trials on the same matter, new regulations on hearing dates based on the optimisation of the use of available material resources, etc); in addition, procedural improvements will be introduced in the light of the experience gained from the implementation of previous legislation (the extension of the payment procedure being a notable case in point, whose simplicity and suitability to protect credit has already been proved).

## **2. Corruption: a threat to the democratic rule of law**

News related to corruption has been rife in 2009. Without encroaching on material specifically dedicated to this phenomenon in the relevant chapter of this Report, in the following pages we will examine corruption from a strictly legal perspective.

## **2.1. Urban development and corruption**

To recount the story of Spain's recent past is to tell a story of collective frustration. The Land Act (*Ley del Suelo*) of 1956 - the legal foundation of our modern urban development - aspired to provide a public service with integrated land management. But this plan never got off the ground and left the way clear for a process which destroyed our urban legacy and plundered our natural heritage.

The restoration of democracy led to a respite in this process of urban degradation because local councils at that time introduced new ideas of city design using new paradigms of urban planning to open up public spaces for civic life. However, these noble ideas are now just a distant memory and plans for a rational management of land use gave way to the expansive demands of the property market.

Since the mid-nineties, Spanish urban planning has been based on two clearly disturbing blueprints. Firstly, the idea that land is an inexhaustible natural resource; and secondly, the substitution of proposals to make towns an integrated area of human co-existence with the passion to build housing developments (*urbanizaciones*). It has proven to be socially and environmentally unsustainable at two levels: socially, because it erects barriers against social interchange (the town squares, once landmarks of civic life, have been replaced by shopping centres which transform citizens into mere consumers); and environmentally, because it increases the consumption of transport and the impact on natural resources. It is no surprise that the most environmentally attractive places have been those most affected by the tsunami of urban development.

This new urbanism served a relentless growth in the housing sector, and its weight has reached unimaginable heights throughout the whole of the Spanish economy. It is interesting to note that the almost unlimited expansion of building activity has not been intended to meet primary

housing needs, but to meet the demands for second homes in places especially pleasant to live and enjoy leisure activities. This explains why the coast and other areas of the highest environmental value close to large cities have suffered most from the impact of this building voracity.

In fact, it cannot be argued that during the years of housing boom there was an unawareness of the risks associated with this model of economic development. What happened was that the weight of the construction sector in an economy that was experiencing unprecedented growth rates was happy to turn a blind eye to the problem.

The conversion of urbanism into the main source of local funding is linked to this. It became a breeding ground for the proliferation of urban corruption. In this respect it should be noted that the Local Finance Act 1988, in accordance with Article 142 of the Constitution, sought to ensure sufficient funds for local authorities primarily through a system of local taxes, which in the case of the municipalities meant, specifically, a distinction between necessary taxes: property taxes, business taxes, and motor vehicle taxes (*Impuesto sobre Bienes Inmuebles – IBI*, *Impuesto de Actividades Económicas – IAE*, and *Impuesto sobre Vehículos Tracción Mecánica – IVTM*), and optional taxes. In addition to securing sufficient funding for municipalities, the law regulates local taxation and demands fiscal responsibility from the municipalities in return for granting them the main role in the collection of optional taxes and in setting the rate for the necessary taxes.

However, the Government of the Popular Party (PP) led by José María Aznar, fulfilling an election promise, undertook a reform of the Local Finance Law which, without actually suppressing the IAE, allowed a substantial reduction in passive taxes by fixing some high income thresholds for taxable activities. This resulted in a significant fall in municipal funding and it became necessary to compensate for this fall by increasing other revenue. What is now pertinent is that the relative loss of weight of the property tax (*IAE*) led urban development activities to

become the main source of filling the local coffers, either through taxes on business activity (*IBI*), or by charging fees for the allocation of new licences and authorisations for land use. The amendment to the law placed the urban local treasuries at the centre of municipal finance thus generating a particularly dangerous dynamic for the rational management of land. Particular note should be taken of the impact of a type of expropriation of municipally-owned land which came onto the market to obtain new revenues, and the often inappropriate use of planning agreements as negotiable instruments of urban planning and implementation.

In this context the rapaciousness of a certain part of the property sector to obtain large profits from small – to say the least - investment is hardly surprising. Indeed, town planning in Spain has been an industry in which the increased value of property has depended almost exclusively on widely discretionary decisions and, moreover, decisions conditioned by previous agreements arrived at with the same individuals who provided the impetus for the urban transformation of the land.

The socialist Government attempted to change this state of affairs mainly through initiatives sponsored by the new Ministry of Housing. The most notable of these was the adoption of a new Land Act in 2007 on whose efficiency it is possible to base some hope. This law strengthens the powers of town planning and tries to tackle the problem of property speculation using instruments that may give positive results; amongst the most important of these is the idea of an 'objectification' of land values arrived at by discounting planning expectations. In fact, prior to this law, public planning action was seriously weakened not only by allowing too many private initiatives, but also by the need to include urban growth expectations as one of the components of land values. It was sometimes the case that undeveloped land had a higher economic value than land which was being used for developing business activities. Given this situation, it was enough simply to do nothing and wait for an urban

planning agreement to reclassify the land in order for the value of it to rise, sometimes dramatically.

In conclusion, although the new Land Act may be a useful tool to ensure that planning meets social needs and complies with a rational use of the available land, its ultimate effectiveness will largely depend on factors outside the scope of this law. It is especially important that changes are made to an economic model which is based on the idea that this particular natural resource - land - is inexhaustible (at this point it is worth mentioning that for the first time in our legal history the new law classifies land as a scarce natural resource), or a bureaucratic generator of wealth. If the solution to the crisis occurs in a context of nostalgia for the “happy years of intensive home-building” we risk repeating the mistakes made in the recent past.

## **2.2 Justice against corruption**

In this study we are not so much interested in examining the judicial response to the phenomena of corruption but rather the dysfunctions that are uncovered by the response. In this regard it should be noted that corruption clearly reveals the shortcomings of the Spanish courts.

It must first be stated that our judicial system is blocked because it was envisaged as a system to combat individual delinquency, and it has suffered a serious breakdown since it has been confronted with new forms of crime. In particular, our justice system is rarely effective when the prosecution of crime requires technical knowledge outside that of the strictly criminal, such as environmental and land-management crime or socio-economic and organised crime. However, in Spanish cases of corruption what generally happens is that both these types of crime are in the same frame: those of a socio-economic nature that put at risk assets protected by environmental and planning legislation. It should come as no surprise, therefore, that the judicial response to corruption is

enormously lengthy and very frequently becomes bogged-down in extremely complicated proceedings. So, an observer unaccustomed to the peculiarities of forensic reality, may be amazed to discover that one case is linked to another which began years earlier – and which maybe never reached the sentencing stage - or that some of those under investigation have been previously charged for having committed very similar crimes.

The correction of procedural deficiencies mentioned above requires as a necessary, but not on its own sufficient, condition a new Criminal Procedure Act that meets the needs of a 21<sup>st</sup>. century society. It would also be helpful for judges and magistrates to receive training beyond the strictly legal in order to provide themselves with the necessary tools for a better understanding of reality; to this end the excellent work of the CGPJ in developing a continuous training programme may serve as an example. Secondly, some of the instances of alleged corruption during 2009, especially the *Gürtel Case*, highlighted the paradoxical effects that can arise from concurrent investigations taking place involving the same people. This is particularly notable when different courts claim procedural prerogatives. Once again, we see a situation where an institution has been designed to confront a reality that is quite different to that currently being experienced. Parliamentary immunity, and the inviolability of Parliament, arose as a technique for avoiding, as far as possible, the instigation of criminal proceedings which could interfere with the functioning of Parliament or which would alter its composition - formed by the will of the electorate. The procedural privileges enjoyed by members of parliament have been designed to deal with accusations such as slander, or crimes of opinion, or strictly individual crimes, and it is in these situations that they can function adequately.

However, the existence of this immunity privilege can affect both the proper functioning of justice and the guarantees of the defendants themselves. With regard to the former, it appears logical to assume that a criminal investigation would be seriously damaged if responsibility for it

were distributed between various courts, with the consequent risk of parallel, conflicting decisions being reached, especially when the communication and sharing of data about the case were inadequate. In addition to this risk, the high courts, who exercise appellate or revisionary functions, are not the most appropriate bodies to carry out the investigation of cases. It is not difficult to see the convenience of allocating the processing and prosecution of corruption cases to one single jurisdiction without any resulting prejudice to subsequent actions. But such proposals ignore the fact that corruption is not in itself a specific crime but a label that encompasses a variety of criminal conduct, and it does not seem appropriate to define jurisdiction on the basis of common nouns. Furthermore, to heap on to a single legal entity the entire responsibility for this galaxy of crimes generically labelled '*corruption*' could be to risk causing a serious danger of overloading, with very little advance being made towards the goal of improving the administration of justice.

In terms of the potential impact of the procedural guarantees on defendants, the prerogative of the highest courts of investigation and prosecution can cause grave violation to the right of appeal. It is true that the Constitutional Court has ruled that this right does not suffer if the prosecution is directly attributable to the judicial body that would hear the case on appeal. But this interpretation is not without loopholes because it is possible to question whether the right to appeal is not strictly speaking the right to have a different court review the proceedings of the first hearing, without '*contamination*'. Judicial '*contamination*' in this instance does not stem from the distinct 'hierarchical' positions of the courts, but rather from their direct intervention in a case in a way that could justify the denial of an appeal by claiming that the court presiding in the first hearing corresponds to the same body which would hear the appeal in the second instance. And this could lead to a very real questioning of principle and confusion over the proper functioning of the courts.

A third issue of concern relates to the problems of the execution of definitive court sentences. It is no coincidence that of the judicial measures for avoiding corruption proposed in the *Fundación Alternativas'* report on Urban Planning and Democracy (2007) much attention was paid to the enforcement of sentences. This is particularly relevant in courts that hear contentious administrative cases. These are the courts that occupy the front line in the control of administrative actions in matters of urban planning and the granting of public contracts, where, if the case is won, the setting-in motion of all the necessary procedural action of the sentence and its enforcement is heavily reliant on the prosecuting party. Because if the contentious court not only has to ensure the protection of individual rights but also to represent the public interest it can hardly be also called upon to be responsible for the enforcement of the sentences where they contribute to the preservation of a diffuse general interest, as often occurs in cases related to the environment or urban planning.

A fourth issue involves the organs of external control. The Court of Auditors and its regional equivalents are entrusted with the external audit of public spending and so should be viewed as a bulwark against corruption. However, they seemed condemned to a type of 'institutional limbo' in which almost no-one takes any notice of them until the time arrives for their renewal. This state of affairs is particularly worrying in the case of the Court of Auditors, whose jurisdiction also covers questions of accountability. A determined effort to tackle corruption would entail strengthening the powers and status of these bodies.

The fifth and final matter of concern is what appears to be a certain propensity on the part of some to look for shortcuts or alternatives to what is deemed to be unsatisfactory court action in the fight against corruption. It is felt that in anticipating a frustrated development in penal cases a simple accusation may be viewed as a condemnatory measure. Consequently, the institution which is the prime guarantor of the right of innocence until guilt is proved on occasions degenerates into a body that

legitimises the imposition of informal judgements, in particular what has come to be called “*pena de telediario*” (trial by television). Given that an investigation stretches over a period of time and that there is no guarantee that it will end in a trial, anticipating the result of the case can result in the accused feeling that not only has he been accused of a crime but that he has also been condemned for it. The outrage caused by the dissemination of images of the accused being led handcuffed into the High Court in the “*caso Pretoria*” should not have been viewed merely as the normal closing of ranks of his fellow party members; rather it should have resulted in general reflection about the treatment meted out to the accused during the investigation of a case, irrespective of his social status or the crimes he might have committed. One thing is to adopt the necessary measures to ensure that the accused appears before a judge, and quite another to publish images that sway public opinion to believe that the accused has already been tried and found guilty. A form of criminal justice that undervalues the rights of citizens can never meet the high standards of a democratic state of law.

We shall end this section with two reflections which do not strictly fall within the bounds of justice. Firstly, we would like to draw attention to the tendency of political leaders to confuse the areas of justice and politics when allocating responsibility. It is claimed that the assignment of responsibility should not occur when a criminal case is still being processed which appears to be the same as saying that political responsibility is a type of additional punishment. We were left in no doubt that this is a two-way game when Mariano Rajoy, president of the PP, declared that he would not be resigning - even though the investigation into the *Gurtel* case had uncovered the existence of an illegal network financing his party - because he himself was not involved in it.<sup>66</sup> Such statements contribute nothing to the proper demarcation of criminal liability, which punishes illegal activity previously established by the legislature according to the social criticism it merits, and by policies

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<sup>66</sup> “Rajoy affirms that he will not resign although irregular financing of his party has been uncovered”, *El País*, January 11<sup>th</sup> 2010.

which refer to the necessary bond of trust between the rulers and the ruled.... Such behaviour conveys a sense that political leaders are a breed apart, and that they can avoid any type of accountability unless it is demanded of them for specifically personal misbehaviour.

### **3. The controversial tax shield of the “*foral regime*” regions**

According to the Basque Statute of Autonomy, the tax system of the Basque provinces of Vizcaya, Guipuzcoa and Alava is controlled exclusively by the intrinsic authority of its autonomous government, and is regulated by “a traditional *foral* statutory system of economic agreements or conventions”. This means that “the competent institutions of the provinces may maintain, establish and regulate the tax system within its territory” (article 41.2a of the Statute). Thus, the General Assembly of each Basque province is the relevant authority for establishing and regulating the various taxes collected by the provinces operating under the ‘*foral*’ regime, and this regulation is the result of the adoption of provincial laws which do not exist in other regions operating under the normal legislative powers. Until now, appeals regarding the laws governing the ‘*foral*’ tax system were made to the ordinary courts (contentious-administration). This situation contrasted with the State tax laws and those of other regions, which due to a exception tax law in Article 31.3 of the Constitution must be of a particular class of law which can only be challenged in the Constitutional Court by a limited number of reasons that are considered legitimate for this purpose in Article 162 of the Constitution.

All the Basque political parties accept that this anomaly should be reversed for two reasons: firstly, to end the lack of protection of the ‘*foral*’ regimes that denies the ‘*foral*’ institutions the right to appeal to the Constitutional Court in cases where the legislator –whether at a State or regional level - invades the area of jurisdiction which is granted to them by the first additional provision of the Constitution, as well as by Article

37 of the Basque Autonomy Statute; and secondly, to overcome the vulnerability resulting from the lack of legal status which, as previously mentioned, only allows them to appeal through the ordinary courts against an action brought by whoever wishes to claim a right or legitimate interest. This can result in “making the constitutional guarantee of the *‘foral’* regimes of the historical Basque provinces weaker than that of the *‘foral’* region of Navarre, although in both cases the constitutional basis is the same: the first additional provision of the Constitution”.<sup>67</sup> The Basque political parties have always maintained that this anomaly has no material justification, reducing it to a mere formal difference which – in the case of the historical Basque provinces - derives from a lack of recognition of the formal legal powers of their institutions.

Hence, the Basque Parliament unanimously approved (that is to say, with a vote in favour from all the parliamentary groups represented in it, including that of the PP) an organic bill to amend the Organic Laws of the Constitutional Court (OLCC) and the Judiciary (LOPJ) so that the provincial tax rules adopted by the General Assembly of the Basque provinces should have the same litigation system regarding taxes as the State and the other regions. In other words, direct or abstract challenges to their tax rules could only be heard before the TC (and not before the ordinary courts), and that this could only take place as a result of an appeal based on one the few reasons legitimated by the Constitution for challenging the abstract control of the validity of regulations with the status of laws.

This aspiration was shared by all the Basque political forces and, as a *quid pro quo* for the support provided by the parliamentary group of the PNV to the socialist Government during the debate on the 2010 State Budget the parliamentary socialist group backed this legislative initiative. It has recently been approved and enacted in the Organic Law 1/2010 of

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<sup>67</sup> In this sense the reform is justified by the interpretation of motives of the Organic Law 1/2010.

February 19<sup>th</sup> of this year as an amendment to the organic law of the Constitutional Court and the Judiciary (BOE of February 20<sup>th</sup>).

By contrast, on both occasions the PP parliamentarians voted against this move. In order to avoid a conflict over the vote in favour of the change registered by the PP members in the Basque parliament, these same members absented themselves from the national Parliament when the full Congress voted on its inclusion. On the second occasions (when a vote was taken about the submission of the proposal to the Senate), the Basque PP members challenged the party whip and voted against their party. However, according to newspaper reports, the national leader of the PP, Mariano Rajoy, had assured them that if the law was passed the PP would not appeal against it to the TC (which, if true, certainly was not a position shared by the members of the PP in La Rioja who had already announced that the government and parliamentarians of La Rioja region would indeed lodge an appeal of unconstitutionality against this law, a move, incidentally, which was also supported by the socialist group of this region).<sup>68</sup>

Interestingly, the Popular Party in the state Parliament has not objected to this reform on legal or constitutional grounds, but on purely political ones as a consequence of their opposition to the pact designed to ensure parliamentary approval of the State Budget.

However, despite the fact that during the whole process only very few regions had expressed objections (with very different emphases) to the constitutional validity of the planned reform, the question of its constitutionality has not been laid to rest. Together with those who argue that the reform is constitutionally acceptable<sup>69</sup>, dissenting opinion can still be heard.

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<sup>68</sup> See: *El País*, December 29<sup>th</sup> 2009, page 11, and also *Expansión* of February 24<sup>th</sup> 2010, page 35.

<sup>69</sup> See for example, I Lasagabaster Herrarte, "Algunas consideraciones en torno al régimen jurídico de las normas forales", *Azpilcueta. Cuadernos de Derecho*, núm. 18, 2002, pp. 157-168, and also J. L. ETXEBERRIA MONASTERIO, "En defensa del blindaje de las normas forales tributarias", *Forum Fiscal de Álava*, mes 7, 2008, pp. 23-27.

Those who question the constitutionality of the approved reform argue that the legislature cannot alter the system of revenue laid out in the Constitution and thereby confer legal status to norms which do not stem from the legislative bodies acknowledged as such in the relevant section of the Constitution (*Constitución y Estatutos*), i.e. where, for whatever reason, an attempt is made to exclude regulatory laws from the control of the ordinary courts. They argue that in our “*numerus clausus*” constitutional system, only the legislative bodies expressly listed as such in the Constitution and the Statutes have legislative powers (and provincial General Assemblies are certainly not included amongst these bodies), or – in exceptional cases - governmental bodies which, following constitutional or statutory decisions, are able to pass measures with legal status in emergency situations or because of legislative delegation. Except for these designated constitutional cases no rule can have legal or quasi-legal status (otherwise the exceptional nature, however limited, of the Decree-Law and the Legislative Decree, would not make sense). According to this premise, no law can grant the status or force of law to an infra-legal ruling. And therefore no law, not even an organic one (OLCC, or LOPJ), can grant legal status to a ruling which constitutionally is not a ruling.

This conclusion would not be at odds with the fact that the OLCC allows the control of certain administrative actions to be under the jurisdiction of the Constitution because the recognition of this constitutional jurisdiction does not detract power from the ordinary courts, which are expressly empowered to control the exercise of statutory authority by Article 106.1 of the Constitution.

In short, those who question the constitutionality of the provincial tax shield laws do not claim that it violates Article 161 of the Constitution (which contains a residual clause in the letter (d) of paragraph 1, under

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which the organic laws grant new powers to the Constitutional Court), but they argue that it could undermine Articles 106.1 and 24.1EC (the right to effective legal protection) since this law prevents various legal norms, which constitutionally have an infra-legal status (such as, it must be emphasised, the '*foral*' norms approved by the General Assemblies of the "*Territorios Históricos*"), from being subject to the judicial control of the ordinary legal system.

#### **4. Conclusions**

1. The panorama of justice in recent months has not significantly improved since the diagnosis made in the Report of Spanish Democracy, 2009. In October 2009 a new strike of judges and magistrates took place, the second in less than a year. The CGPJ, for its part, once again shows evident signs of blockage, inaction and internal tension, to a degree that has made it unable to approve its mandatory report on the reform of the abortion law and to agree, by a qualified majority, on the pending appointment/renewal of judicial officials. In addition, there have been recent allegations about the horse trading supposedly surrounding judicial appointments to the plenary of the CGPJ which, in the majority of cases, refers to the transactions and exchanges between the two judicial associations with a majority representation on the Council (*APM* and *Jueces para la Democracia*). It goes without saying that all of this has been detrimental to the principle of meritocracy as well as for the non-affiliated candidates and those from other associations.
2. The judicial climate has become even more rarefied, if such were possible, because of various complaints (for prevarication and/or corruption) that have been accumulating in the Criminal Division of the High Court against Baltasar Garzón, the chief judge of the Central Investigation Court No. 5 of the *Audiencia Nacional*. The decision to try the cases has resulted in a highly controversial debate.

3. The Constitutional Court has extended by yet another year the frustrating wait for its ruling on the statute of autonomy for Catalonia and, incidentally, has also delayed for another year the renewal of one third of its members, pending since late 2007. This has occurred in a way that it is considered by many to be in open contravention of the Constitution in the sense that it will affect the partial renovations of Parliament and the Senate.
4. On a more positive note, the law of Procedural Law Reform for the implementation of the new judicial office was adopted and entered into force. While prevailing opinion seems to applaud the crucial importance of this broad legislative package, it has not been without criticism. In essence, the reform of the judicial office represents a profound reorganisation of the Justice Administration, particularly at the strictly legal level. This reform strengthens the position of court clerks while at the same time frees judges and magistrates from extra-judicial tasks which, to date, they have had to perform. Consequently, it allows judges to concentrate their efforts on trials and the execution of sentences which, according to the Constitution, is their exclusive function.
5. The recent evolution of Spanish urban development has shown to what point corruption can pervert public policy – where surely public interests should prevail – and has degraded a sector of the legislature of unquestionable importance for the preservation of constitutionally-relevant values, such as the protection of the countryside and culture.
6. The judicial response to the phenomena of alleged corruption which has come to light over the year has revealed the inadequacy of our legal system to cope with such occurrences. We have had to fight corruption with out-dated judicial instruments best designed for a rural, pre-technical society, and which are ill-equipped to combat organised crime or to curb the excesses of those in positions of power.

7. The ending of the so-called 'tax shield' of the '*foral regimes*' has been approved by the General Assemblies of the "*Territorios Históricos*" (Guipuzcoa, Vizcaya and Alava) of the Basque Country. This reform was pursued in spite of being of a regulatory nature, and introduces a procedural regime of appeal for legal tax issues similar to those at State and regional level. To this end, it has been established that challenges can only be made directly or abstractedly to the TC (and not to the ordinary courts) - as if they had the same status as a law - and consequently that such challenges for an abstract review of the validity of norms with the status of laws can only be brought for reasons legitimated by the Constitution. The constitutionality of this reform has not been totally accepted. The La Rioja region has already announced that it will appeal to the Constitutional Court (TC).

# 7

## Education and teaching in times of crisis

The most relevant political factors for Spanish schools during the greater part of 2009 were, without a doubt, the following: the introduction of the subject known as Citizenship Education, the enactment of the Catalan education law (LEC), and the Ministry of Education's proposal for a pact regarding education which, unlike the first two, has only just started to be implemented at the time of writing.

Any review of these or other education policies should take as its starting point the actual existing situation of the education system and its position within the general economic and political framework, as well as an examination of the possibilities for improvement via such means as those mentioned above. Prior study of these three issues is useful because it is not rare to find that their importance is often exaggerated giving an undeserved relevance to political intervention in the education system.

### 1. The current situation in the Spanish school system

Since 2000 the reports of the *Programa Internacional para la Evaluación de Estudiantes (PISA)* have provided excellent information about the state of our schools that complements the material collected from other sources such as the OECD's *Panorama de la Educación* which places Spanish schools at the average level for OECD and European countries, at least in reference to the basic skills of reading, mathematics and natural sciences. More specifically, the *PISA* studies - carried out in 2000, 2003 and 2006 - show that Spanish fifteen year olds have obtained similar skills to those in Central Europe and the USA and superior skills to the same age group in Southern European countries. In particular, school children in the north of Spain were ranked amongst the best in Europe, while those from the south were found in the

lower-middle zone along with their counterparts from Portugal, Italy, Greece and Russia.

This rating is reflected in other studies carried out by the OECD (eg *PISA*, 2008:61), the *Instituto de Evaluación Español* (see: *IE*, 2007:18), and prestigious sociologists (see: Pérez Díaz and Rodríguez, 2003:447; Martínez García, 2009). For those who maintain that the data can be interpreted in different ways and lean towards the generally-accepted view that ‘Spanish school children are at the bottom of the class in Europe’, we offer below an opportunity for them to make an unbiased judgement:

**TABLE 1**

**Averages for the science test, *PISA 2006*, and the percentages of students at Level 1**

Spanish regions and selective countries

	<b>Average</b>	<b>% level 1</b>
Finland		
Estonia		
Australia		
Low Countries		
<b>Castile and Leon</b>		
<b>La Rioja</b>		
Germany		
United Kingdom		
Sweden		
Poland		
Denmark		
<b>Basque Country</b>		
France		
<b>Catalonia</b>		
USA		
<b>Spain</b>		
Russia		

Italy

Portugal

**Andalusia**

Total OECD

*Source: PISA 2006, Levels of science understanding for tomorrow's world*

According to the majority of the surveys published by the OECD in their *Panoramas de la educación*, our schools are amongst the best in Europe. Thus, with reference to the 2007 study, a Spanish child who starts statutory schooling at the age of five has 17.2 years of school 'life expectancy' compared to the OECD average of 17.7 years; 40% of Spaniards between the ages of 25 and 34 have obtained a high school certificate – above the OECD average of 32% and the EU average of 30%; 40% of Spanish students with a high school certificate come from families where the head of the household is a manual worker – ranked above countries such as Finland (29%), Ireland (18%) and France (29%); and much more in the same vein. In two indicators Spain rates below the OECD averages. One is administrative school dropouts (the distinction between objective and administrative school dropouts has been defined by Martinez Garcia, 2006), and refers to students who have not obtained the certificate of obligatory secondary education (ESO) and stands at roughly 30%; and the other indicator refers to the certificate of non-obligatory secondary education (i.e. Baccalaureate or technical training), referred to as early school abandonment, and which also stands at around 30%.

What do these figures really represent? In Table I it can be seen that, measured by the same objective criteria, Spain has less students at Level 1 (the lowest level) than countries with a similar average or, indeed, a higher one such as USA, Norway or France (in fact Castile and Leon and the Rioja region have a lower percentage of objective school dropouts than the Low Countries). In contrast to what is generally believed and as long as the figures are judged by the same objective criteria, Spain does not have 'the highest school dropout rate of the richest and most advanced countries'.

So far so good; Spanish school students obtain the same results as those in Norway and better results than those in Italy or Greece when judged by the same criteria. However, the average percentage of Spanish students obtaining a higher school certificate is 72%, while the average for Norway is 91%, for Italy 86%, and for Greece, 100%. Should we not conclude, therefore, that the problem is not so much the educational level obtained by the students but rather the demands of the schools? And if, within Spain, only 17% of Basque school children do not gain a certificate of *ESO*, but in the Rioja region the same index reaches 28.5% when the objective school dropout rate is 16% and 11% respectively, should we not abandon the concept of administrative 'dropout' as the standard by which to judge quality? Furthermore, should we not ask why the Basque Country awards the certificate of *ESO* to students who score 416 points on the *PISA* test while in the Rioja region students must score 474 points in order to obtain it?

It would appear that school dropout and early school abandonment rates have little to do with what students learn and what schools teach them, but a lot to do with what standards schools demand in order to award the certificate of *ESO* and to allow students to enter the Baccalaureate or technical training courses. Given the arbitrariness of the variation between regions it can be assumed that a similar variation exists between individual schools. If the average Spanish 'dropout' rate is higher than the average of neighbouring countries it must be because, rather than reflecting the quality of our schools, it reflects the difficulties which exist for school children to continue with higher studies.

*PISA* and the indexes of the OECD relate only to academic teaching and not to the moral, political or aesthetic aspects which properly deserve to be included under the heading of 'education'. Unlike areas of academic teaching there are no objective criteria for judging these, partly because of technical difficulties and partly because of a lack of consensus regarding their aims. There are no scientific studies to counteract the widely-held view regarding moral decline and the perversion of values. Nevertheless, given that this

impression has been well-documented at least since the time of Plato, it has to be considered that maybe the past has not always been better, and that maybe the educational material in Spanish schools should be awarded a vote of confidence based on the excellence of the processes: both those that guarantee the ability of parents to select the school of their choice, and those that encourage the participation of interested parties in the definition of their educative programmes ( 'choice and voice', as defined by Hirschman).

## **2. The relationship between schools, the economy, politics and moral values**

There is not sufficient space here to discuss the relationship between schooling and economic development which, according to economists who have studied this question, remains unclear (see: Hanushek and Wössman, 2007). It would be stating the obvious to insist that there can be no possible relationship between the state of our schools and the current economic crisis due to the simple fact of a lack of synchronization. How difficult it would be if we had to await the results of the educational reforms in order to overcome the economic crisis! The cognitive aspect of education is first and foremost relevant to the economy; but what about other educational functions? Perhaps they are less important in terms of the economy, but are they not equally crucial in terms of society? A better moral education, or what is commonly called these days the formation of values, surely means that an individual behaves better than those who have not received such an education.

As has already been mentioned, and accepting for the sake of the argument that no empirical evidence has yet been produced regarding this relationship due to problems of measurement in reference to both education and moral behaviour, not much progress has been made in this field. In contrast to what has occurred in the academic teaching field, any progress in this area has immediately been confronted with disagreement over which moral education is considered best.

The main field of disagreement has been between secular concepts - that attempt to encourage universal moral values, and religious concepts that present their particular values as universal truths. We are dealing here with two theoretically irreconcilable positions: while one side will not admit any criteria of moral judgement other than the search for consensus through the exercise of dialogue based on the universal human reason which is evenly distributed amongst the human race, the other side maintains that the supreme moral criteria has been revealed to us in the distant past by a particular deity and that there is no further discussion beyond its interpretation by certain authorised people. There has been no lack of attempts at reconciliation, such as the recent speculations of Habermas (extensively criticised by radical secularists, amongst others) regarding religion as a forerunner for a morality based on human reason (Habermas, 2006).

A similar secular argument cites the duality between heteronomous and autonomous morality. It can be stated with some confidence that the criticisms of Piaget to Durkheim are still valid and have been recently up-dated by Harris writing about 'conventional wisdom'. Briefly, these criticisms maintain that prevailing morality amongst those in the last stage of moral development is not the heteronomous morality that is imparted by parents and teachers – as proposed by Durkheim, but rather an autonomous morality which originates from the peer group. The frequency of a secular reaction of those educated in religious schools, the rise of Islamic fundamentalism against officially-imposed secularisation, the transformation of sexual mores beginning in the West in the sixties, not to mention fashion and *avant-garde* artistic and literary movements throughout the 20<sup>th</sup> century, are only some examples of how young people subvert the moral traditions of the generation seeking to educate them.

The relationship between school education and politics is even more uncertain than the relationship between education and moral values. It appears obvious that within a well-functioning democracy a better education will produce better citizens. However, civic and political values form a part of moral values. But here we are dealing with a highly artificial social construct, and one which

individuals feel much less commitment to than to their primary social groupings such as family, neighbourhood or friends. For this reason many people feel that the role of the school is crucial in developing a sense of national identity, patriotism and civic values, although it must be admitted that it can also create problems for the efficient functioning of schools. Failed totalitarian regimes, as well as democratic ones, offer a good example of the difficulties of indoctrination in schools. And even though it is possible to sacrifice some degree of efficiency in schools in order to create greater political cohesion and civic responsibility, there is a degree of uncertainty that is particularly complicated in the case of Spain. To which region or nation should political values refer to? Love of the homeland - but which homeland? There is no possibility of resolving these problems by rational discussion. Civic virtues should be the same throughout Spain, but the collective entity taken as the reference point is usually based on a more-or-less arbitrary historical event, unsusceptible to rational argument. (Constitutional patriotism is not a real alternative to an ethnic patriotism when the latter calls into question the identity of the former).

Despite all this, and for all the doubts about the effectiveness of education in schools and the arguments that schools are simply one more not so important influence in the area of moral education, it is extremely difficult for anyone to renounce the use of the education system to further their own beliefs and ideas. We see how the liberal thinkers, educated at religious establishments, later aspired to use education to form free-thinkers employing the same determination that religious believers, schooled by free-thinkers, want their children to attend religious schools. While everyone is aware that the politics of education often achieves the opposite of its original aim, almost everyone appears to believe that such cases are the exception and that almost any moral education is better than none at all.

### **3. The effectiveness of educational policies**

There are few other areas where the illusion of 'omnipotence' triumphs more than in education. According to Freud this 'omnipotence' is shared by both

primitive and infantile thought processes. It would seem that politicians – or society – imagine that academic results and the moral behaviour and civic attitudes of school children might improve simply by legislating that the school curriculum include material on sex, road or civic education, or by organising teaching in a different way, or by instilling a culture of hard-work or the pleasure of learning, or – however paradoxical it might seem - by leaving schools on the side-lines of political debate.

It would seem to matter little that reality has always fallen far short of these worthy intentions. In fact, the greater the belief in the effectiveness of these future reforms the more severe is the condemnation of reforms of the past. In spite of the changes made to improve the old systems - or maybe because of certain mistaken reforms - it is widely-held that schools nowadays teach less and provide a worse education than schools in the past, but there is still confidence that things will be put right by introducing yet more reforms which, finally, will be the right ones.

In reality improvement at the academic as well as the moral level, and in terms of instructional and educational materials, is difficult. Jencks and Philips (1998) wrote that educational policies that are practical and at the same time effective have by now all been discovered and implemented everywhere where pedagogic knowledge has reached a minimum level of institutionalisation, and where there is no lack of resources nor excess of fanaticism. Sometimes, complex and expensive measures of doubtful effectiveness may achieve a certain success whilst a charismatic reform is carried out, but they do not stand the test of time and fall into disuse in the hands of ordinary teachers. This type of reform belongs to the category of organisational and didactic reforms which are hotly disputed: how to make learning relevant, how to learn by discovery, how to grant authority to teachers, the insistence on certain types of groupings, the re-education of parents, a return to the culture of hard-work, curriculum diversification, the introduction of itineraries, or – the latest fashion – school funding and teachers' payment according to the results achieved by students in external and objective evaluations, etc. These are the reforms where their failure – or better, their inanity – is invariably justified by citing a lack of

economic or human resources to put them properly into practice. The *PISA* studies, despite their authors and the organisation of their sponsors, provide a crushing indictment of what has been called “*la indiferencia de las variaciones*” (Carabaña, 2008).

#### **4. Citizenship education**

Having drawn the broad outlines of the educational situation we can now examine the more important policies, beginning with the much-discussed implementation of the subject known as citizenship education, which received parliamentary assent in the organic education law (LOE) of 2006.

During the Franco regime, which some of us still remember, political education in the primary schools, unlike the rest of the subjects, was not taught in a specific class or by particular teachers; instead it permeated all school activities. However, at the level of baccalaureate, it became a subject called *Formación de Espíritu Nacional* and was taught by a corps of special teachers trained in the *Escuela de Mandos del Movimiento Nacional* - the only existing political party. During the period of the transition to democracy, the possibility of maintaining this subject as part of the school syllabus and adapting it to the new political regime held little appeal for anyone, both for reasons of form as well as content and political education was reduced to a minimal commitment to the teaching of the Constitution. This commitment was not very successful, and there were no objections when the *Ley Orgánica de Ordenación General de Sistema Educativo (LOGSE)* of 1990 abolished this subject and assimilated its content into those of a transversal ‘education in values’ which was to be contained in all subjects taught, with the collaboration of all teachers, in every school. It was stated in a programme document published by the Ministry of Education and Science (MEC) in 1994 that the full development of the personality of each pupil is the basic aim of an education that responds to the demand that schools constitute a learning arena for citizenship and worthwhile ethical attitudes. To this end the ministry defined some of ‘transversal teaching content’ which had to imbue the whole of the school curriculum, making moral and civic

education a transversal dimension of all that was taught and not a separate area or subject. Marchesi later pronounced on the same idea, but in much more expressive words than employed by the ministry:

*“The option chosen for the teaching of values is that it should form part of the educational project and curriculum of each centre and of all areas of the curriculum, and that therefore it should be the responsibility of the all the teachers...Its goal is to create educational communities with a moral commitment” (Marchesi, 2000:179).*

The transversal nature of the teaching of values is a clearly progressive solution to the question of civic and ethical education, and furthermore is consistent with the proposals for the ‘*escuela pública comunitaria*’ inspired years earlier by Gómez Llorente y Mayoral (1981) which emphasised the formation of democratic values through student participation in the government of schools. Initially, education was unprepared to deal with the doctrinal and normative aspects of teaching values which were dealt with within the limited ambit of each school, leaving the Administration the vaguely-defined task of overseeing that the values taught did not contradict the widely-accepted ones of freedom, respect and tolerance. Certainly no-one has defined whether the relevant space of citizenship is the world, the town, or one of the intermediate political bodies. Nothing has been defined either regarding religious or rational justifications for basic values. The transversal method of teaching of values distanced them from the direct influence of public authorities, leaving them in the hands of the schools.

Agreement over the transversal character of teaching values was widespread but not total. The PP was the first party to attempt to pass legislation influencing the moral education of pupils. As soon as they had won an overall majority in the elections of 2000 they announced their intention to reinforce the teaching of moral values such as tolerance, liberty, equality, justice and political pluralism by setting-up a common area in the curriculum addressing ‘culture, values and religion, which would be taught in two versions: one religious and the other a-confessional. The project was immediately rejected by the left who viewed it as a return to the old idea of ethics classes as an

alternative to religion classes. But even amongst socialists, including such well-known figures as *Gómez Llorente*, voices were raised in favour of adding a school subject to the inter-disciplinary and participative area of school life, suggesting 'the configuration *ex novo* of an area of ethics and civics for the *Educación Secundaria Obligatoria (ESO)*, and of various materials for the two year course of baccalaureate that would cover political institutions, the main ethical/civic problems of the day, the most important ethical/political theories of modern times, world order, human rights, and comparative religion' (Gómez Llorente, 2002:135).

After gaining victory at the elections in 2004, the PSOE prioritised a proposal to institute an evaluated school subject teaching citizenship (*MEC*, 2004) in their legislative programme. The only explanation for this about-turn is the weight of influence gained by those who had been calling for such action for some time past. The European model was invoked (see Martín Cortés, 2006), but what was clear was that – as in almost everything – Europe provided all sorts of models. The European information office offered the following advice on teaching materials: "Citizenship education may be treated in three different ways. It may be presented as independent material (normally obligatory); integrated into the syllabus of traditional subjects (such as history, geography, social studies, or philosophy); or conceived as transversal material. In primary education, the majority of countries tend to integrate citizenship material into other subjects or incorporate it transversally. By contrast, at the secondary stage, almost half of the European countries have introduced independent material for the teaching of citizenship." (Eurydice, 2006:59)

Given the increasing polarisation of political life, reactions were as extreme as can be imagined. The left closed ranks in favour of the new proposal in a more disciplined and cohesive manner than they had shown a little earlier in defence of the transversal issue. The right protested uproariously against what they viewed as the imposition of a particular Government's ideology. Curiously, disagreement did not focus on the central theme of the subject: that of politics. In this area there was consensus about the constitutional

values such as democracy, human dignity, freedom, respect for human rights, tolerance, equality, respect for the law, social justice, solidarity, responsibility, loyalty, cooperation, participation, etc, which were shared by the majority of European educational systems. The dissent arose over the issue of the ethics of the family and sexual relations – an area fairly removed from the central themes of citizenship and politics – which some considered to be part of the public domain, while others considered them to be restricted to the family sphere.

This dissent only had practical value if one believed that the Government was able to dictate the attitudes and values that teachers imparted to their pupils. Was anyone so ingenuous, or so ignorant of the actual way schools functioned? While those opposing the Government's proposal orchestrated a great fanfare of protest (which included parents casting themselves in the role of conscientious objectors and the eccentric idea, emanating from the regional government of Valencia, that citizenship should be taught in English), the religious schools were studying the possibilities of alternative interpretations of the law and found a number. Where certain intellectuals and politicians saw a secular and rationalistic way to educate future citizens, the religious schools promptly saw an opportunity to educate pupils in their schools in accordance with their own belief system. To the great disgust of the leaders of the PP, the religious schools accepted the Government's proposal. Torreblanco (2010) has written that the freedom of teachers and textbook publishers to interpret the objectives "contributed to dilute, if not actually subvert, the objectives of the new classroom subject of citizenship". The textbooks reflected the broad consensus surrounding the values in abstract, but there was a great variety - as varied as the position of the authors (well-known moral philosophers such as Savater, Marina, and Camps) - when it came to applying examples of concrete ethical and political problems as the journalist, Quina Prades, graphically illustrated (Prades, 2007). After all the disputes had died down, it is still not known what type of family is used as a model in any particular school, nor what sort of citizen is being formed, nor which actual nation – Spain, Basque, Catalan, or any other – is cited as a reference for the civic consciousness which this new subject is

attempting to foster. What is most likely is that each school and each teacher continues to use the same references as they had prior to the introduction of the new subject.

## 5. The Catalan Education Act

The most important event in the field of education – one of the most crucial for democracy, for the definition of ‘demos’, one which in terms of citizenship education was viewed as a reference by the political community– was the passing of the Catalan Education Act (*LEC*) in the Catalan regional government.

The antecedents of the *LEC* lie in the so-called *Pacte Nacional per l'Educació* signed in 2006 by the three coalition parties of the Catalan government and certain ‘social’ organisations which included the board of governors for Catalan private schools (Medina, 2007). The pact in itself was of little significance, indeed, it could be said that its main importance lay in its title. Like the subsequent *LEC*, it is an asymmetric mixture of general principles – justice, equality, investment; details of intentions – a sixth hour of classes, schools open for an extra hour; and ominous silences – for example, regarding religious teaching; in short: a pact for the sake of making a pact. It is interesting that at the pact’s core is an agreement on six years of totally free schooling for pupils at private, government-subsided schools as well as regulating norms concerning the financial contribution from the families of pupils - norms which were contained in the *Ley Orgánica Reguladora del Derecho a la Educación (LODE)* of 1985 - but which no-body, it appeared, thought would ever be enforced.

The real objective of this motley bag of legislation was not to change one comma of the current situation of Catalan school system. There was nothing of importance that the schools could do after the *LEC* that they could do not before it. However, the exotic novelty of the *LEC*, not contained in the pact but widely publicised, was an amplification of the autonomy of schools which was to be controlled and monitored by an external evaluation that would decide their funding levels. This was similar

to a system used in the USA known as *high stakes testing*. If it were simply a sincere but naive commitment we would not have been faced with such a dense smoke-screen hiding the real proposition of the *LEC*, which was set out clearly in the preamble. The proposition was inspired by the *Estatut* (Regional Government Charter for Catalonia), and nothing but the *Estatut*. It is a “fitting and special law, designed in accordance with the legal competences of the government of Catalonia, with the aim of creating an educational system which is appropriate for Catalan society”. The true aim of the *LEC* was not instrumental, but symbolic. The intention behind the law was to free the Catalan educational system from Spanish law, reinterpreting the already existing situation as something based on the *Estatut* and the will of the Catalan people. In the whole of the long text the word ‘*español*’ does not appear once; and not for lack of opportunity such as when there is mention of organic laws or shared competences (shared with whom?); although there is less cause to refer to Europe, that word is indeed used, for example, to declare that Catalonia aspires to take its place amongst the other European countries; references to the Spanish legislative framework are essential (the ‘Constitution’ is mentioned twice in Article 2), although allusions to it are normally reduced to ‘the organic’ or ‘the law’. The society taken as reference is invariably that of Catalonia; thus, primary education should teach the pupils ‘a knowledge of the basic elements of the history, geography, and traditional pertaining to Catalonia which will further their sense of belonging’ (Art. 58); and the *LEC* bases its argument in favour of citizenship education on the ‘will to create Catalan citizens who can identify themselves with a common culture in which the Catalan language is a fundamental element for social integration’ (Introduction). In these ways the *LEC* shows itself to be truly a law for a Catalan nationalist education system.

Whenever possible, the important of the symbols fosters the severing of links with the Spanish educational system. This takes place above all in two fields: in the language used in schools, and in the teachers employed in them. The *LEC* guarantees that pupils become competent in both Catalan and Spanish, although by very distinct methods; the use of the

Catalan language is obligatory and unique throughout the whole educational system and the distinct areas are mentioned in minute detail in order not to leave open any loophole: in the classroom, in documents, in parent-teacher relations, in extra-curricular activities, in tutorials and orientation; Spanish, however, is forbidden in schools with the exception, thank goodness, of classes in Spanish language and literature. If, with such contradictions, the *Generalitat* can truly guarantee an ability to speak both languages equally fluently then there can be little doubt that we have come across an authentic revolution in language teaching.

The *LEC* allows the *Generalitat* to create its own corps of teachers. The entry exams for the Catalan teaching profession must be conducted in Catalan, and candidates have to first prove their knowledge of this language; oral and written domination of the Spanish language is also required for teaching functions. Primary teachers are to be called 'maestros' while secondary teachers are given the curious title of 'catedráticos de educación' (professors of education) and 'profesores de educación' by the *Generalitat*. The mobility of teachers between Catalonia and the rest of Spain is regulated by the twelfth additional resolution to the *LEC*, thus:

"With the aim of enforcing the principles of equality and inter-communication between the respective educational systems within the basic common framework of the teaching profession defined by the legislation, the educational administration will guarantee the coordination of the corresponding competitive exams, to be held periodically, for transfers from the state sector to vacant positions in schools dependent on the *Generalitat*. The right of all public teachers from any educational administration to participate in these exams is to be recognised as long as the general and specific requirements established for the candidature are met".

If one day Catalonia formally separates from Spain, which many think will be sooner rather than later, it will not be necessary to change one jot or comma of the *LEC*. It will only be necessary to dream-up adequate

substitutions for '*Constitución*', '*ordenamiento*' and '*orgánico*', because those of 'nation' and 'citizenship' are already explicitly defined.

## **6. The Education Agreement**

The agreement on education proposed by Ángel Gabilondo just after he was named as minister in the Easter reshuffle of 2009 took as its starting-point the accepted diagnosis of the ills of the system, which were the PP were happy to share. These were that the Spanish scores in the international evaluations were disastrous, that our school dropout rate of 30% was the highest in Europe, that the 30% of early school-leavers distanced us from the Lisbon objectives, etc. In addition, the agreement was presented as a measure to be applied with some urgency because curing these ills in the education system would greatly speed-up the recovery from the economic crisis and the change of the Spanish productive model.

As was explained earlier, it is impossible to agree wholeheartedly with this diagnosis of the education system, and it is obvious that the benefits of the agreement were exaggerated. Nevertheless, the agreement in general was a good idea. The novelty of the proposal lay in the assumption that the errors of the teaching system could no longer be corrected by continual changes of policy but only by changes which were acceptable to all parties; and that if consensus could not be achieved, then the system should be left alone. It signified that the emphasis should be put on procedures rather than on particularities. According to the proposal, the principle aim was to arrive at a legislative stability for the system that would enable it to be rescued from the vagaries of party politics. To state it baldly: a politician recognised that politics had had a negative effect on education and publically proposed to his fellow politicians the need to arrive at an agreement to halt the constant tinkering with the system. Gabilondo expressed this in the following way:

“Education and training are going to be determining factors if Spain is to make a strong recovery from the current economic crisis, and this will demand an appropriate political and social response to the challenge that we as a country are facing. That Spanish society is already aware of this is evidenced by the fact that 92% of Spaniards believe that it is absolutely crucial to reach an agreement over the education system in order to guarantee the future well-being of the country. As responsible politicians we must demonstrate that we are up to this challenge. Therefore I repeat my invitation to reach an agreement through dialogue and consensus. The next decade must be one of legislative stability for the education system in order to achieve the goals which we all desire”. (Gabilondo, 2010a)

A proposal of this type does not say much for a multi-party democratic system. At first glance it is couched in terms of political constellations – or complex ideologies – that associate the idea of change with instability and uncertainty rather than with adaptation and flexibility. It is an old idea that has attracted the nostalgia of many for a time when Governments did not change laws in the way that they do now but made small alterations to the general design. It will continue to be viewed positively that parents are enraged to find that their eldest child’s textbook does not serve for their youngest child; that teachers are annoyed by the changes to the syllabus; and that the general public are fed-up by the irritating changes to terminology. Worse still, it may be imagined that such proposals reinforce the views of those who believe on principle that governments are more efficient when they directly apply technical solutions to social problems.

In fact, the pact on education which we are examining here is not an agreement about the main organisational outlines of the education system such as was contained in the constitutional pact. Puelles, in line with the distinction made by Sartori, situates the constitutional pact within the framework of ‘*consensos políticos*’ which refer to those matters that are usually a question of conflict and disagreement between the parties. The idea of those who designed the constitutional agreement was to define some sufficiently broad parameters to allow political parties to introduce diverse

programmes, for social entities to offer a variety of educational options, and for individuals to exercise their freedom of choice (Puelles, 2007). The education agreement, in contrast, would attempt to restrict, but not to obliterate, those types of political alternatives which exist as much on the left/right axis as on the centralisation/de-centralisation spectrum. A result of the constitutional pact was that when either party gained the necessary majority they proceeded to design a new law on education: the PSOE passed the *LOGSE* in 1990, the PP passed the organic law of Quality in Teaching (*LOCE*) in 2003, and the PSOE passed another law, the *LOE*, in 2006. The aim of a new education agreement would be that parties renounced their particular programmes and agreed on a stable legal framework in which associations and interested parties could develop their own offers and choices in a way that has already been suggested in a manifesto – considered as the forerunner of the current idea – elaborated by Marchesi and Martín Patino (*Fundación Encuentro*, 1997).

Is an agreement of this nature desirable? Puelles maintains by that taking certain particular issues out of the traditional arena of politics is something which must be done with very great care and only in very occasional instances so as not to tamper with the free workings of a democratic system. The guiding criteria should be that the rewards of the reform process are clearly seen to be superior to the results of the current situation, and that party politicking would be damaging. The educational reforms appear, without any doubt, to comply with these criteria. As has been argued elsewhere, legislative activity in this area has had a much more expressive than instrumental nature and has been largely motivated by different party strategies for electoral mobilisation. The changes introduced by the last two laws – *LOCE* and *LOE* – were more cosmetic than anything else, and served less to improve schools than to express the differences between the parties (Carabaña, 2007). In fact, the changes introduced by the *LOGSE* were not really directed towards providing a more stable environment for schools and hardly altered their day-to-day functioning (Tiana, 2007). This new agreement is attempting to address the issue of the continual threat caused by political party changes to the legal framework of the system

which, at the same time, deceive the public about their real efficiency, paralyse the functioning ability of the schools, and obstruct genuine innovation. Such an agreement is certainly desirable even though it does not on its own guarantee stability – indeed, it implies yet another change to existing legislation - and it is possible that the changes caused by its design and the need to reach consensus will cause even more instability.

Is such an agreement possible? Enormous difficulties exist, both strategically and substantively, in persuading political parties to renounce their own particular programmes in favour of the general interest.

The strategic problems are caused by the difficulty in calculating their political profitability. The proposal of a pact creates a similar situation to that of the dilemma of a prisoner: each party would cooperate if it could be assured that it would benefit (electorally), but this benefit can only arise from a cost to the other party. Well then, legislative stability is not an absolute good: what guarantee is there that it will not lead to some kind of legislative atrophy? If an agreement is reached, how strong will public criticism be about a rigidity that advocates the reform of an education system which is itself the victim of atrophied parties? And in the face of this uncertainty are the main parties going to play the card of stability leaving the smaller parties to benefit politically from advocating educational reform?

In addition, the agreement will benefit whichever party loses the election, not the party that wins. To be seen to be conceding important points of your party's programme in the lead-up to an agreement is tantamount to recognising that you have already lost the battle and that you are simply trying to rescue what you can. To enter negotiations arrogantly conceding nothing is to say that you are sure of electoral victory. But in terms of image there is always a reflection. To offer to sacrifice important parts of your own programme shows sincerity and good faith; insisting on unconditional acceptance of your own proposals projects an image of arrogance and vanity. It will be very difficult for experts on electoral behaviour to decide which of the alternative reactions will predominate.

If, as seems most likely, political interests prevail, then the sponsors of the agreement can do no other than reap electoral benefit as a result of the huge public concern about education. The negotiations will not be without drama, with both main parties hoping to blame the other if the discussions end in failure. At the moment, all the effort is being made by the Government; the Minister has been calling for a 'culture of hard-work' but without kowtowing to the jargon of 'active pedagogy', 'constructivism' or 'significant learning'. Furthermore, he has allowed the PP to champion as their own, the idea of 'comprehension' in the fourth grade of *ESO (Enseñaza Secundario Obligatoria)* – in fact, an idea that the left has been fighting hard to introduce over the last few years (Gabilondo, 2010b). Alerted perhaps by so much public interest, the PP, after exaggerating the aforementioned three major faults in the system - bad results in the *PISA* tests, high dropout rates and early school-leaving - have offered to do everything to remedy this situation. This attitude, whether naive or cunning, anticipates the negation of an agreement whose essence lies in de-politicising the topic of education. Of course, it is possible to argue that the most cunning have been those who, having come up with all the laws on education from 1984 to the present, now propose to those who only presented the *LOCE* of 2003 (which never was passed) that education should be rescued from the vanities of politics.

## **7. Conclusions: Fantasies for an agreement**

1. If political interests had not dominated, much more progress could have been made in overcoming the parties' substantive differences. In the final analysis, as we have already commented, the most trumpeted differences have been more symbolic than real, while the real differences have been of a minor nature. Perhaps it will not be so difficult to reach accord on the symbolic divergences in a way which amalgamates the preferences of all parties on matters of principle. Thus, it will be enough to accept that not all activity is enjoyable in order to synthesis the idea of 'active schooling' with the culture of hard-work; leaving aside the main

issues, it should not be so difficult to recognise that both the family and the State have a right to educate; that the concept of teaching as a public service has co-existed (at least since the *LODE* of 1984) with a subsidised private school sector without causing any more problems than those provoked by the offers of specific regional authorities; that the secular nature of public education, or that financed by public funds, has been juxtaposed with the right of parents to choose religious education without any apparent contradiction in at least two regional education laws (Andalusia and Catalonia); that the culture of evaluation works so well – that of the pupils by the teachers, the teachers by the inspectors, the pupils and the schools by sample and annual tests, two of which are contained in the *LOE* – that debate is reduced to the amount of publicity that should be given to the results, an issue in which dogmatism gives way to pragmatism when it comes to a question of experience; etc.

2. After amalgamating the principles, opposition about diversification, for example, and different curricular itineraries for the pupils should be reduced almost automatically to indiscernible levels, especially as the Government has already conceded that it would be good to introduce a greater degree of flexibility in order to reduce dropout and early school-leaving rates, and that with this end in mind they have proposed “that there should be two orientations/options/profiles (whichever terminology is preferred): one orientated towards baccalaureate, and the other towards higher technical training (*Formación Profesional Superior*)” (Gabilondo, 2010b). It only remains for the PP to recognise, in turn, that except in the very smallest schools, two itineraries (the word that is commonly used) are less flexible than the options and diverse curriculums currently available, and for them to accept maintaining them. It would be best therefore to forget the idea of adding an extra year to the baccalaureate course, which would imply either dividing the fourth year of the obligatory secondary education into the baccalaureate course and some other course (i.e. much more than itineraries), or to delay university entry by a year and in this way add back on the year that the Bologna

Agreement has just taken away, in addition to creating difficulties for the higher technical training option.

3. Citizenship education should be placed under the heading of indiscernible differences. Although it would seem to be a highly ideological issue, in principle its definition neither favours nor prejudices any of the larger options because, in any given case, it depends on who is teaching the material. Maybe the PP proposal to teach the Constitution at lower secondary level, situating the subject somewhere between the transversal idea suggested by the *LOGSE* and the separate subject suggested in the *LOE*, would be a reasonable compromise.
4. Neither should it be difficult to reach agreement on issues where there is, in fact, very little opposition - either because they are related to the question of grading, such as the standardisation of the pre-university exams, or to the final marking of the baccalaureate course; or because they are related to matters as technical as the movement between professional training, baccalaureate and university courses in which it is not possible, even metaphorically, to establish a relation between principles and ideology. Indeed, if one has the patience to examine the history of this issue, it becomes obvious that the traditional positions of the parties have either undergone frequent changes or at the very least have vacillated between the two.
5. Many thorny issues which could sabotage an agreement will have to be left untouched because they fall under the responsibility of regional governments. Amongst these are the autonomy of schools, external evaluations, and incentives for schools and teachers. Although they occupy an important place in the list of the proposals from the PP, it would be difficult to achieve agreement on them at a national level. It would also mean withdrawing these issues from the vagaries of regional politics where the risks earlier described of democratic delegitimisation and sclerosis, and the strategic complexities are greater than they are at the national level, and could be further complicated by regional sections

of national parties as well as by local regional parties. A proposal has been made by the *Colectivo Luzuriaga* (2009) that all the regional governments in Spain should agree on one standard, nation-wide educational policy, with the Ministry of Education acting as 'first amongst equals', but such an agreement would be an altogether different matter and much more complex to achieve than the agreement which is being suggested now between the main parties. For the same reason, it is highly unlikely that there would be any advantage to include the topic of languages in the agreement.

6. So far as can be seen, it is possible that the agreement could include what, in the opinion of this report, are the ideal solutions to the high rates of dropouts and early school-leaving. The dropout rate could be totally eliminated by the simple procedure of abandoning the end-of-course title of *ESO* and substituting it for a simple certificate of achievement. Nothing would be lost by this: the only real function of the current title – which causes the differentiation between those who can pass on to further studies and those who cannot – could be better served by a career guidance service. Much would be gained, and moreover it would mean not just that the false problem of 'administrative' school dropouts would disappear but also that the injustice of conceding a title based on the aforementioned arbitrary criteria would be abolished (remember that in the Basque country the title is awarded to pupils with a *PISA* score of 417 points while La Rioja region demands 474).
7. The most obvious solution to the objective of maintaining pupils in the system until at least 18 does not lie in obliging them to stay on at their schools, but in making the experience more attractive by creating alternative centres adapted to their motivations, aptitudes and aspirations. At present, the education system expels sixteen year olds who do not pass the certificate of *ESO* (excluding those who are repeating a course) and according to various criteria designated by local tradition labels them as dropouts (*fracasados*). The abolition of the title of *ESO*, and with it the concept of dropout, should be complemented by a

system in which all pupils who so desire could stay on, studying any course available in the centre. Countries such as Germany with a reputable dual system have already introduced this path.

All this would not, perhaps, be so important in terms of results, but in terms of the process.

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# 8

## A democratic audit of foreign policy

### **1. Foreign policy as an factor of electoral damage**

In spite of the international isolation which dominated Spanish foreign policy for many years, during the past decade it has been the object of often extremely virulent and contentious debate. The war in Iraq, in addition to playing a decisive role in the March 2004 elections, was also a determining factor of public debate during both the second mandate of José María Aznar (2000-2004) and the whole of the first mandate of José Luis Rodríguez Zapatero (2004-2008). And, if 2009 is any example to go by, the process appears to be continuing during Zapatero's second term.

#### **1.1. Government strategy**

For the Government, foreign policy is an area where they can strengthen the bonds between their voters and themselves via a series of progressive principles and values which are central to their ideology and electoral commitments. Thus, the Government has continued leading the initiative, Alliance of Civilisations; it has increased funding for development cooperation and the fight against poverty within the framework of the Millennium Objectives drawn-up by the United Nations; defended a particular method of confronting international terrorism (based on police-work and rights rather than on military and extra-judicial activity); and has worked towards reinforcing European policies and institutions while preparing for Spain's presidency of the European Union (EU) in the first half

of 2010.<sup>70</sup> The arrival of Obama at the White House in January 2009 has enabled the Spanish Government to rescue US bi-lateral relations from the abyss wherein it had sunk during the Bush period.<sup>71</sup> In short, the Government has set-up a series of principled guidelines for Spanish foreign policy: legality, multilateralism and progressiveness; and has done so without ever once denying the usefulness of this policy as an element of ideological reinforcement that consolidates its own electoral support.

## 1.2. **Opposition strategy**

Foreign policy has been a key element of the opposition strategy to damage the Government. They have applied this strategy on various fronts. In order to broaden their habitual criticism of the 'political correctness' of the President of the Government in the field of foreign policy, the first front has been to emphasis the supposed irrelevance of Spain in such matters (juxtaposing it with the supposed international relevance of Spain during the Aznar years), attributing the sacrifice of Spanish national interests in European and multilateral negotiations to a lack of character and interest in foreign policy on the part of Zapatero. Thus, the PP has based its arguments either on quantitative aspects (comparing the amount of international travel of Aznar with that of Zapatero), or on qualitative aspects (discounting the achievements of Zapatero in foreign matters compared with those of the Aznar era).<sup>72</sup>

The second line of attack related to the accusation of progressiveness which the PP made against Zapatero's foreign policy which, they argued, was demonstrated by the adoption of various empty initiatives (for example, the Alliance of Civilisations), the refusal to consider the events in Afghanistan as

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<sup>70</sup> "A stronger Spain and a fairer world": from the PSOE electoral programme 2008; "For the good of Spain, a committed foreign policy": speech by the President of the Government in the Prado Museum, June 16<sup>th</sup> 2008; "More global government", Policy speech, 37<sup>th</sup> PSOE Congress, section 229-242; Alliance of Civilisations: initiative of the Secretary General of the UN in 2005 following a proposal of the Spanish and Turkish governments (see: <http://www.unaoc.org/> and <http://www.pnac.es>).

<sup>71</sup> According to the study, *Transatlantic Trends* 2009, sympathy towards the USA in Spain rose from 11% to 85% with the arrival of Obama to the presidency ([http://www.fbbva.es/TLFU/dat/principales\\_resultados\\_transatlantic\\_trends\\_090909.pdf](http://www.fbbva.es/TLFU/dat/principales_resultados_transatlantic_trends_090909.pdf), page 5).

<sup>72</sup> "Zapatero has replaced the defence of the interests of Spain with the diplomacy of the 'smile'" in "Una política exterior sin idea de España", Papeles de la Fundación FAES, no. 60, December 2007.

a war, the 'dangerous friendships' with such regimes as Cuba, Venezuela and even Morocco, the alleged payment of ransom money to the kidnappers of Spanish fisherman captured off the coast of Somalia (which resonated effectively with internal criticism over the negotiations with ETA), and betrayal over the Gibraltar issue.<sup>73</sup>

The third front of the PP's criticism concerned the effectiveness of Government action and - when it has not been attacking the supposed incompetence of those mainly responsible for foreign policy citing as an example the withdrawal from Kosovo, the *Haidar* case, or the kidnapping of *Alakrana* - has centred on the alleged lack of coordination between the ministries.<sup>74</sup>

### 1.3. Polarisation instead of debate

Both the Government and the Opposition have used foreign policy as ammunition in the battle to prove the alleged radicalisation of the other in its bid to capture the political centre-ground.

On one hand, the socialists have used the positions of the PP on the war in Iraq, or more recently the conflict in Afghanistan, in order to highlight the eccentricity of their opponent's positions compared to those of their European colleagues, and at the same time have defended socialist foreign policy as a return to the consensus which dominated the decades of the eighties and nineties, dubbing Zapatero as a worthy successor to Gonzalez. They have also used foreign policy to highlight the opposition's disloyalty and to emphasise the continued presence of *neocon* ideology on the PP

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<sup>73</sup> See: "La España que no cuenta", of Rafael Bardají, Cuadernos de Pensamiento político no. 17, Fundación FAES; "Una política exterior sin idea de España", Papeles de la Fundación FAES, no. 60, December 2007. Also, "La España mengaunte....menguada" of Rafael Bardají and Florentino Portero, Papeles de la Fundación FAES, no. 37, February 2007.

<sup>74</sup> The visit of the minister, Moratinos, to Gibraltar was described by the coordinator of the Presidency and Foreign Affairs for the PP, Jorge Moragas, as a 'preventative surrender' (Papeles de la Fundación FAES, no. 115, September 2009). On the kidnapping of the *Playa de Bakio*, see: José María Aznar: "Ahora los ejércitos escoltan a los piratas" (El Imparcial, June 6th 2008), or for a more recent analysis: "Piratas del Mar: rendición de Zapatero, firmeza de Sarkozy" by Mario Ramos Vera, Papeles de la Fundación FAES, no. 72, May 2008.

agenda. On the other hand, the PP have ridiculed initiatives such as the Alliance of Civilisations, and criticised the Government decision not to involve itself more deeply in the strictly military aspects of the Afghani conflict as an example of outmoded left-wing radicalism.

So, from one side, accusations of anti-Americanism, outmoded progressiveness, over-friendliness with left-wing dictators, and political correctness; and from the other, criticisms of neo-conservatism, servility to the USA, anti-Europeanism, and disloyalty to the Government. Under these polarised circumstances the attempt to organise a rational debate on Spanish foreign policy has been anything but easy.<sup>75</sup>

In fact, despite the commitment (and even the formal agreement signed by all the political parties in the Parliament) to support the Government during the Spanish Presidency of the EU, the willingness to compromise did not last even for the first two weeks of the presidential term of the EU: the PP called the President's proposal to include linking mechanisms and sanctions in the renewed Lisbon Agenda as incidental and absurd, and so on.<sup>76</sup>

#### **1.4. Three dimensions for evaluating Spanish foreign policy**

The first question that must be asked is to what extent foreign policy is State policy, and, following from this, how necessary is it to reach consensus in this field. This is a question which should have a normative, but also a practical element to it, in so far as the stability of foreign policy and its capacity to resist the fluctuations caused by changes of Government is usually considered to be extremely important in guaranteeing the greatest effectiveness of a country's foreign policy. Similarly, the more professional

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<sup>75</sup> See: "Diagnóstico Diferencial", by José María de Areilza and José Ignacio Torreblanca, *Foreign Policy en Español*, Junio-Julio 2009; the reply of the minister, Moratinos, in "Diagnosis y política exterior", *Política Exterior*, núm.131 September - October 2009, pgs. 83-96, and the rejoinder of the authors ("Polémico Diagnóstico") in *Foreign Policy en Español*, August - September 2009.

<sup>76</sup> See: "El Congreso convalida el Pacto PSOE-PP para la presidencia española", *Europa Press* December 15th 2009.

the foreign affairs administration and the better its coordination with the Government, the more effective will be its foreign policy. The implication of this is that the effectiveness of foreign policy should be judged by its results.

Secondly, we must examine the democratic quality of Government action in matters of foreign policy: whether there are prospective and retrospective control mechanisms, what level of participation is available to civil society, what degree of accountability. The democratic quality of foreign policy is still far from ideal for a country such as Spain which aspires to leave its mark on the international scene. It has been argued that Spanish foreign policy suffers from problems common to other public policies: an excess of partisanship, parliamentary spinelessness, a lack of transparency, a lack of independent counsel, and a lack of flexibility, planning and coordination.

Thirdly, the question arises of which principles and values underpin Spanish foreign policy and up to what point the championing of democracy and human rights abroad forms part of the foreign policy agenda for Spanish democracy. Here we come across a puzzling paradox: although in its relatively recent past Spain has experienced a dearth of freedom, and although nowadays the debate over human rights enjoys a central position in national politics, it has to be admitted that when it comes to foreign policy Spain's agenda exhibits a lack of energy in the promotion of democracy and human rights beyond its borders. Neither the Government, nor the parties, nor civil society have acted as activists in this area, despite the fact that in the two most important areas for Spanish foreign policy (North Africa and Latin-America) these problems are so important as to constitute one of the main obstacles for consolidating Spanish interests.

## **2. Consensus and vacillation**

### **Consensus**

The discussion on consensus in foreign policy can be approached from two different angles: if there is consensus; or if there should be consensus. Whether there is consensus is open to debate, although logically of course,

that depends on which criteria are employed to define consensus and which period is under scrutiny. Usually, when consensus is mentioned in the sphere of foreign policy an analogy is made with the consensus which guided the transition to democracy, or foreign policy is understood, more directly, to have been an appendix to this impressive original consensus at the end of the decade of the seventies. But the truth of the matter is that during the transition, foreign policy did not reach beyond Spain's integration into the European Community. Moreover, it is clear that the unanimous agreement on this matter was because entry into the European Community constituted – at least since the failed attempt to be an associate of the EC in 1962 – the only valid reference that was acceptable to all parties, viewed from the context of the success and ratification of the transition to democracy. However, beyond Spain's entry into the EC, there would have been little consensus about foreign policy.

## **2.2. Vacillation**

If there was one issue which typified the lack of consensus it would be that of Spain's membership of NATO. This was a perfect example of the internal divisions within the country: those (basically of the centre-right and the right) who wanted to consolidate the image of Spain as a western democracy, fully integrated into the transatlantic security system, were confronted by others who were resistant to the idea that the democratisation of Spain meant a reinforcement of the ties with the USA, that had not only not played any role in that process, but had provided a bulwark of international survival for the Franco dictatorship. The socialists' rejection of Spain's entry into NATO, the decision of Calvo-Sotelo to force the entry on the eve of certain electoral defeat, and the electoral commitment of the PSOE to hold a referendum calling for withdrawal, show how the myth of consensus in foreign policy is as wide-spread as it is wrong.

In fact, in no other member state of NATO has there been such a virulent debate over remaining in the organisation, and one would have to resort to the current case of the Ukraine in order to observe such a polarisation in

foreign affairs. For this reason, the importance of foreign policy in the 2004 elections was comparable to that given to it during the election campaign of 1982. In both cases (1982 and 2004), the PSOE's discourse on policy change was intimately linked to foreign policy. While the 'change' of 1982 mainly referred to Spain's withdrawal from NATO, the 'change' of 2004 was closely related to the commitment to retire from Iraq and return to a European and multilateral stance.

Similarly, although the governments of Suarez, Gonzalez and Aznar coincided in the view that Europe was the main priority for Spanish foreign policy, it in no way followed that there was consensus about the objectives. The policies of the socialists and the PP on the European stage have been clearly divergent in terms of preferences for one or another position: the PP have focused mainly on economic matters and internal security while the socialists have directed their attention more on the building of EU institutions, and policies related to matters of citizenship. Likewise, in relation to forming coalitions, the PSOE have opted to maintain a privileged position with the Franco-German axis, while the PP have preferred to build alternative alliances which have been more liberal and Atlantic-orientated than those held by France and Germany which were considered to be overly statist and distant from the Washington worldview.<sup>77</sup>

### **2.3. Our neighbours are no different**

The reality, therefore, is not only that foreign policy is highly politicised and vitriolic, but also that governments have had very distinct views about how to approach similar priorities. Taking all this into account, when we examine the impact of the changes in governments on the foreign policies of the four heavyweights which provide, or should provide, our most immediate

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<sup>77</sup> See: Una España confusa en una Europa desorientada", *Política Exterior*, núm. 133, January-February, 2010. Also, in historical terms, "La europeización de la política exterior española", in Carlos Closa (ed.), *La Europeización del Sistema Político Español*. Madrid: Istmo, 2001, pp. 483-511.

references (France, Germany, the UK and Italy), we can guess at similar, or even greater divergences caused by lack of consensus. In Britain, the membership of the EU is permanently under interrogation; in France, the conservative and the socialist foreign agendas are clearly divergent (and highly polarised by Sarkozy's decision to pursue France's integrated membership of NATO); in Germany, transatlantic relations and European policy have undergone a radical change of direction from those of Schröder to those of Merkel; and finally in Italy, the lack of continuity between Prodi and Berlusconi is well-nigh impossible to describe. Without a doubt Spaniards should view the changes and vagaries of foreign policy over the last years as something more common than at first appears.<sup>78</sup>

#### **2.4. The myth of national interests**

Each country has a series of basic parameters which describe their position in the world (geographic, historic, size, wealth, population, etc). Thus, the basic coordinates of Spanish foreign policy remain the same for any government: Spain is a European country, with a medium-level income, its size is medium-large, and it possesses frontiers, a historic tradition, and cultural assets which are responsible for its important foreign policy interests in the Mediterranean and Latin America. Spain is also an advanced democracy with a consolidated welfare state and a rule of law; it has established a very generous definition of citizenship; and has many international commitments relating to human rights, peace, security and sustainable development. Therefore, together with the physical parameters that shape Spanish foreign policy, there are a number of political parameters that cannot be altered by external action. In other words, Spain is bound by its constitutional principles and international commitments to building peace

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<sup>78</sup> This fact has not passed unnoticed by Spain's own Minister for Foreign Affairs. "We need to demolish the myth of the need for a 'general consensus' in foreign policy because it is almost non-existent in other European countries and because different political groups have different positions on each issue" (Miguel Angel Moratinos, *Europa Press*, January 17<sup>th</sup> 2008).

and human rights under international law, lacking the legal scope and legitimacy to act in any other manner.

The coordinates of our foreign policy will change according to increases and decreases in our wealth and population, the expansion or decline of our language and culture, the triumphs and failures of our neighbours; but this will happen slowly. Similarly, to the extent that the collective project and values of Spain change (as has occurred over the last 25 years), so will its foreign policy.

Having stated this, it is difficult to say that the national interest – understood as the automatic transfer of all these benchmarks to practical, external action – exists as such. It makes still less sense to talk of ‘State interests’ or ‘the interests of the State’ when this is understood to mean a set of specific interests pertaining to the independent state apparatus of a society. Classic diplomacy, based on the idea that only an elite possesses the expertise to interpret the national interest and transform it into foreign policy, is simply incompatible with a society that is democratic, open, plural and economically advanced. In a democratic society there is no *one* interest, but many interests which intersect, overlap, complement, or contradict each other. The task of the political system is to represent such interests, to accommodate varying configurations of conflict and cooperation, and to translate them into political action. Thus, there is no such thing as a single national interest which defines the ‘popular will’ and can be translated into a country’s foreign policy.

### **3. Legitimacy and democracy: evaluating the quality of foreign policy**

In line with the famous distinction made by Lincoln in his Gettysburg address, the exercise of democracy can be understood as the merging of three processes: the government *of* the people, *by* the people, *for* the

people.<sup>79</sup> While these distinctions are frequently applied in other policy areas they are rarely applied to the sphere of foreign policy.

### 3.1. Wrapped in the flag

In the first instance, we speak of the existence of *demos*: a group which shares and is identified by a set of common principles and values: in short, a group which has a recognisable political identity. It has, therefore, a symbolic legitimacy. It is from this sense of identity and belonging that foreign policy is examined and subjected to questions such as “Who are we?”, “With whom, and how are we willing to achieve something?”; but it is also subject to calls for consensus and decisions relating to how foreign policy is to be aligned with domestic policy.

It is this *exterior* patriotism (formulated by the British expression, “My country right or wrong”) together with the constitutional patriotism (*interior*) of Habermas that explains the popularity ratings of Bush in the months just after 11-S, but which also – given the ease with which politicians wrap themselves in the flag – invents external enemies and uses foreign policy as the scapegoat for internal mistakes.

So we can say that foreign policy has an identifying component which is forceful enough to allow a manipulation of the electorate in order to gain political support. This, of course, also occurs with other public policies. However, with foreign policy there is a difference, and this is due to the fact that this particular policy sphere pertains to the field of international relations which, unlike domestic policy, is guided by a scarcely democratic power dynamic, and is only partially subject to rules (of international law); therefore, there are higher incentives and less restrictions when it comes to using foreign policy to benefit the Government.

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<sup>79</sup> Gettysburg Address, Abraham Lincoln, November 19<sup>th</sup> 1863, Gettysburg, Pennsylvania.

### **3.2. The quality of democracy in foreign policy**

Secondly, we must examine the representative and participative institutions that enable those being governed to exercise prospective and retrospective control over government action (accountability). These elements place emphasis on the quality of the procedures, their openness and transparency, civil participation, the role of Parliament, the courts of justice, the media, and civil society. The objective of examining these institutions is to see whether the decisions taken in foreign policy are consistent with the democratic standards that society demands, and whether they ensure that different interests are adequately represented and reconciled, and whether those affected or interested in a particular policy are entitled to sufficient information and access to the decision-making process before, during and after the event.

This dimension can be seen in practice in the decision taken by Aznar to offer diplomatic support in the United Nations during the debate on the invasion of Iraq. Beyond legal considerations, the Government had been entrusted to direct foreign policy, and so was able to take a decision without violating the democratic legitimacy of the procedure. However, given the lack of public support, the issue must be analysed from another point of view: is a foreign policy decision legitimate if it is rejected by more than 80% of the population? Finally, the decision of Aznar was subjected to a retrospective negative evaluation in the March elections of 2004. To express it another way, Spanish voters did not ratify this policy but instead preferred the policy of Zapatero who expressed an explicit commitment to pull Spanish troops out of Iraq as the central message of the PSOE's electoral campaign.

### **3.3. Efficiency and accountability: enlightened despotism**

The third aspect that affects legitimacy concerns results: *effectiveness*. Whatever the objectives of foreign policy (maximising the economic welfare of Spaniards, contributing to world peace, the spread of democracy and

human rights, or a mix of any of these), foreign policy must be judged from a utilitarian perspective, i.e. according to its ability to meet the goals it has set. This involves examining, firstly, the main strategic guidelines of foreign policy and, secondly, the symmetry between means and ends.

In foreign policy, as in areas of domestic policy, it is common to speak of tension between efficiency and procedure. Conversely, it is possible to argue that there is a positive correlation between the levels of openness and participation of a policy and its degree of effectiveness, and that democratic restrictions are not necessarily relevant to the execution of foreign policy. However, what normally prevails is a type of what is often called *enlightened despotism* which is certainly encouraged by the typical secrecy of the way in which diplomatic affairs are conducted, the technocratic nature of much of international affairs, and the undemocratic characteristics and often dubious legality of the international order.

Hence, the call for consensus and for the understanding of foreign policy as 'State policy', distanced from public debate and electoral fray; but also the justification of *realpolitik*, that is to say, the idea that a democracy cannot design its foreign policy using the same ethical considerations that characterise its domestic policies. This creates a contradiction between the principles *ad intra* and *ad extra*.

The debate on ethical foreign policy, therefore, implies taking decisions about what principles and values should motivate external action, and what limitations should be placed on it.<sup>80</sup>

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<sup>80</sup> In this sense the proposal of Robin Cook, a former British Foreign Secretary, is now considered classic. See: "'Robin Cook's speech on ethical foreign policy: the speech by Robin Cook that started it all", *The Guardian*, May 12th 1997.

## 4. Auditing foreign policy: results

### 4.1. The democratic quality of foreign policy

There are various positions from which to examine the democratic quality of Spanish foreign policy.

The first and maybe the most important position is that which relates to the approval given to a policy by the electorate. Unfortunately a specific approval rating does not exist for foreign policy, but there are specific instruments which enable this evaluation to be calculated. The *CIS* and the barometer of the *Instituto Elcano* carry out a periodic analysis on this subject; there is also a periodic evaluation of the Foreign Ministry and its work.

Although these studies show that there is general satisfaction with foreign policy (particularly amongst voters who support the Government)<sup>81</sup>, there are, however, three areas where this support is not so clear: Turkish membership of the EU, which the Government actively supports but which does not enjoy the support of a majority of public opinion; Spain's military presence in Afghanistan, which is rejected by a majority of socialist voters; and finally, Cuba, where those in favour of maintaining or increasing pressure on the Cuban regime have a clear majority even amongst the left (of the left: 43% compared with 31%; and of the general population: 61% compared to 23%).<sup>82</sup>

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<sup>81</sup> According to the *CIS* barometer of July 2009 (*CIS* 2811), the Foreign Minister obtained a score of 4.64 which ranked him in fifth place among the members of the Government. In October of the same year (*CIS* 2815), with a score of 4.28 he remained in fifth place. Taking into account that his presence in Government dates from the first term (he and the vice-president are the only two original members remaining in the Cabinet), and in the absence of a general question on the rating awarded to foreign policy, one can infer that the Government's foreign policy is an area that, in general, the voters consider satisfactory.

<sup>82</sup> According to the barometer of the *Real Instituto Elcano* (*BRIE*), the mission in Afghanistan is only approved of by 28% of left voters compared with an overall average approval rating of 45%. Furthermore, in terms of the decision taken by the Government during the course of 2009 to increase troops, 54% of those surveyed were in favour of withdrawing or reducing the Spanish troops. Once again this was the majority view on the left, and was 10 points higher than the overall average; this, despite the fact that 72% considered that there is a connection between Al-Queda and the Taliban (*BRIE*, 22 *Oleada*, November 2009 pg. 88, 92 and 135). In terms of the Turkish question, the scarce

With regard to the second position from which to examine the task of parliamentary and Senate control over Government action, it should be mentioned that the President of the Government makes regular appearances to inform the members of these bodies of the results of European Council meetings, and also answers parliamentary question during sessions of control which often touch on foreign policy. In addition, as is normal, the annual parliamentary debate on the “*Estado de la Nación*” (State of the Nation debate) usually offers the opportunity for Parliament to debate the direction of foreign policy in depth.

However, given the confrontational nature of debate and the use of foreign policy to attempt to damage the Government, these control sessions have at times been used more to demonstrate the disagreement existing between the parties than to offer the public a chance to hear a real debate on the central issues. Two cases in 2009 illustrated this point: the withdrawal of troops from Kosovo, and the kidnapping of the crew and the fishing boat, *Alakrana*. In the first case, the withdrawal from Kosovo, in spite of support from the PP, was the subject of an extremely damaging PP strategy centred on demonstrating to the public the lack of governmental coordination; in the second case, although it would have been logical for the opposition to have evaluated the action taken and made their criticisms after the situation had been successfully resolved, their desire to damage the Government meant that they launched their criticisms while events were still unfolding.<sup>83</sup>

The approval procedure in Parliament for sending armed forces abroad should be positively evaluated. Although from a democratic point of view it is

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data available (CIS 2589, January 2005) demonstrates that public opinion is notably less enthusiastic than the politicians regarding Turkey’s entry.

<sup>83</sup> On March 14<sup>th</sup> 2009, seven days before the announcement of withdrawal, the opposition spokesperson on foreign affairs, Gustavo de Aristegui, asked the Government for “the immediate withdrawal of soldiers and civil servants in Kosovo” and opined that the Zapatero Government maintained a “totally incoherent” attitude that was “unacceptable” (*Europa Press*, March 12<sup>th</sup> 2009). On March 19<sup>th</sup> 2009, the PP accused the Government of “irresponsibility” for withdrawing the troops and asked for the Defence Minister to be reprimanded for the way in which the withdrawal announcement had been managed. In a similar fashion, with the kidnapping still unresolved, Soraya Saénz de Santamaría publically criticised “the appearance of weakness that Spain was giving” (*Diario El Público*, 23.10.2009).

not strictly necessary (in so far as the Government enjoys the constitutional right to send troops abroad in line with its international commitments), the actual practice affords the opportunity for a bigger and better debate to take place, at least on occasions when there might be discrepancies between the Government and public opinion (as was the case during the Iraq war and, to a certain extent, is currently the case with the Spanish presence in Afghanistan which, as already noted, is not strongly supported by the public).<sup>84</sup> Nevertheless the strict procedures for controlling the sending of armed forces abroad under the mandate of the UN or NATO contrasts with the laxity, or even lack of control, in situations studied, approved, or supervised by European missions (PESD).<sup>85</sup>

Parliamentary committees are the ideal place for exercising detailed control over the government action, although the attendance of ministers and State Secretaries is sporadic. But even here various problems arise: firstly, the fact that the work is spread over so many different committees (external, international cooperation and development, and the mixed Senate/Congress EU committee) tends to reproduce the same problems of fragmentation and inconsistency in foreign policy at the parliamentary level as exists at the governmental level. The second problem is related to the inadequate quality and quantity of the information available to the committees. This deficiency takes place at two levels: on one hand, because there are no traditions or rules which oblige the Foreign Ministry to send detailed and up-to-date

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<sup>84</sup> Article 4.2 of the *Ley Orgánica de Defensa Nacional* 7, November 17th 2005 (BOE 276 November 18th 2005). As a general rule, previous approval is only obligatory in Germany and Italy, although the possibility exists of approving action retrospectively in emergency situations. In Denmark consultation is also obligatory if the intervention cannot count on the express authorisation of the State Government for the sending of troops in order to avoid acts of aggression. By contrast, the governments of France, Britain, Belgium, Poland and Luxemburg, amongst others, enjoy discretionary powers without any type of previous parliamentary consultation being necessary (Félix Arteaga, “*La ley de Defensa Nacional: apuntes para un debate*, ARI 52/2005 del Real Instituto Elcano). See also: “El control político de las misiones en el exterior”, *Fundación Alternativas*, Seminarios y Jornadas 1/2004.

<sup>85</sup> See: Anna Herranz, “*El Congreso de los Diputados y las políticas europeas de seguridad: cuánto (des)control parlamentario*”, in Esther Barbé (Coord.) *España en Europa 2004-2008*, *Monografías del Observatorio de Política Exterior. Europea*, núm. 4, February 2008, Bellaterra (Barcelona).

periodic reports the committees usually have to base their control on information which is not sufficiently well-documented and which consequently impedes the members' in-depth understanding of any given issue. Although the *Real Decreto* (Royal Decree) of 2007 obliged the Foreign Ministry to produce and present an annual report on Spanish foreign policy to the External Policy Committee and to relay it to Parliament, what is clear is that the report mentioned in the Decree has not materialised.<sup>86</sup>

On the other hand, the committees' lack of sufficiently-qualified permanent staff dedicated to research and documentation, means that the task of exercising control over the Government is often based on information that members manage to gather from within their own circles and which, therefore, does not provide them with enough independent information to question the information published by the Government in sufficient detail. Consequently, their capacity to exercise appropriate control is limited. In addition, and in contrast to the parliamentary committees of our most advanced neighbours, the committees responsible for external relations are not usually very active in calling for independent experts, soliciting the public appearance of ambassadors or others responsible for the execution of Spanish foreign affairs, nor for producing their own reports on specific issues; and finally, they are clearly not active in the systematic evaluation of the Government's foreign policy.<sup>87</sup>

The problem of control over governmental action and political responsibility was evident during December 2009 in the *Haidar Affair*. Independently to the differences of opinion that were demonstrated in relation to Government policy towards Morocco and Western Sahara, it was clear that for the month

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<sup>86</sup> "It is up to the Council, via the Ministry of Foreign Affairs and Cooperation, to send an annual report to Parliament on "*Balance, prioridades y perspectivas de la acción exterior del Estado*" being the results of the actions and decisions adopted". Artículo 4.4 RD 1389/2007 modified by the *Real Decreto* 1412/2000 of July 21st, on the creation of the Council of Foreign Affairs.

<sup>87</sup> For a comparison between the workings of neighbouring national parliaments' control over external affairs, see: *The National Co-ordination of EU Policy; the Domestic Level*, by H. Kassim, G. Peters y V. Wright Oxford University Press, 2003.

or so that the crisis lasted and for the duration of the hunger-strike of Haidar, Parliament did not know the full facts of what was actually happening. Consequently, the Committee of Foreign Affairs had to accept the explanations offered by the Foreign Minister without being able to compare them adequately with information from the Foreign Ministry itself, the Interior Ministry, the President of the Government, or the airline companies involved.<sup>88</sup>

Furthermore, as the actual *Haidar case* demonstrated, the recent changes to the Organic Law of Judicial Powers in reference to the so-called '*jurisdicción universal*', which limited the ability of Spanish courts to hear cases related to the violation of human rights abroad, had imposed restrictions on the control of the legality of Government action, thus preventing the High Court from properly overseeing the action taken in the *Haidar case*.<sup>89</sup> The introduction of these restrictions, closely related to the proliferation in the High Court of cases which were causing discomfort to Spanish diplomacy (Tibet, "selective assassinations" on the part of the Israeli armed forces, etc), signified a substantial change to the first announcements made at the beginning of the legislature about employing a more ethical foreign policy. Furthermore, there had not been enough public debate on the matter, and nor had the Government sufficiently taken into account the implications of the changes.<sup>90</sup> These examples highlight a somewhat more widespread phenomenon: the continuing lack of transparency, and the difficulties of public access to information, which in the sphere of foreign policy is accentuated for two reasons: primarily, the fact that most of these relations occur outside the borders of Spain and, logically, far from the public eye; and secondly,

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<sup>88</sup> In fact, this was the most relevant piece of information for understanding not only the origins of the case but also the difficulties faced at the time of resolving the situation (i.e. the personal telephone calls between the Spanish and Moroccan Foreign Ministries just before the unravelling of the crisis were not known until December 17<sup>th</sup> coinciding with the resolution of the crisis). Page 16 of the *Diario de Sesiones del Congreso de los Diputados, Año 2009, IX Legislatura, Núm. 451, Comisión de Asuntos Exteriores, Sesión núm. 23* held on Thursday December 17th 2009.

<sup>89</sup> "El fiscal de la Audiencia Nacional se declara incompetente para investigar las denuncias de Haidar", (The judge of the High Court is declared unqualified to investigate the accusations of Haidar) *Diario El PAIS*, 3/12/2009.

<sup>90</sup> Carlos Espósito, "Una limitación de carácter furtivo", *Diario El País*, September 2nd 2009.

because of the organisational weakness of civil society, the limitations and lack of independence on the part of the *think-tanks*, and the fragmentation and the lack of visibility of the Spanish Academy. Even in the case of development cooperation, which takes up a great deal of public expenditure, accounting mechanisms and transparency are still very much at a preliminary stage.<sup>91</sup>

## 4.2 The effectiveness of foreign policy

The second dimension of an evaluation of foreign policy has to do with its effectiveness. There has been general agreement about various errors.

Firstly, despite commitments mentioned in the electoral programmes of the PSOE in 2004 and 2008, the Government has not fully put into effect the promised reform of the foreign office. This was a reform which was described as imperative by the actual project which initiated the declaration of the *MAEC* in 2004-2005 because the structures and procedures of the service inadequately reflected the changes which had taken place in the international position of Spain over the last twenty years. In spite of the promise to revive the project after the Spanish presidency of the EU (the first half of 2010) it is difficult to see how a reform that was not addressed in times of prosperity can be undertaken now in the midst of serious budgetary restraints.<sup>92</sup>

The reform bill, lacking sufficient political momentum, ran aground on the disagreements between different ministries; it also owed its failure to corporatism and resistance to change within the Foreign Ministry (*MAEC: Ministerio de Asuntos Exteriores y Cooperación*) even though its own

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<sup>91</sup> See: *Rendición de cuentas y sociedad civil en el sistema español de cooperación al desarrollo*, Anna Ayuso Pozo y Katty Cascante Hernández, Fundación Alternativas, no. 4, Exlibris Política Exterior 2009.

<sup>92</sup> “The reform of the foreign office and its work has been pending since the time of the transition to democracy. The new international circumstances of the 21<sup>st</sup> century and the actual internal development of Spain mean that it cannot be delayed any longer” (Electoral Programme of the PSOE, 2008).

minister had mentioned in the report previous to the bill such important problems as “too little planning”, “insufficient coordination” and “inadequate management procedures”.<sup>93</sup>

Given the failure of the bill in Parliament, the Government opted instead to carry out a minimal reform on two separate points: firstly, to ease the deficiency of human resources in the *MAEC*, which counted on a smaller staff than the foreign ministry in Holland. And secondly, to revitalize the Council on Foreign Policy as the instrument to design, coordinate, execute and evaluate Spanish foreign policy.<sup>94</sup> However, new embassies and consulates have been opened in various African and Asian countries and so far have not received any special attention.

The first measure was inadequate, and the second was not carried out. In the first case, an increase in the available openings to accede to the diplomatic corps did not lead to any substantive changes to the actual accessibility or functioning of the profession: an increase in numbers did not lead to a corresponding increase in quality. This has meant that many problems continue to exist: the social and professional homogeneity for access to the diplomatic corps; the lack of incentives to specialized on particular issues, regions or languages; the politicisation of appointments and job assignments; the lack of ability to analyse or take a long-term view, and the lack of up-dating working methods in line with new information technology.

The second object of reform centred on the Foreign Policy Committee. It has been disregarded as an effective body for handling the coordination of foreign policy due, in part, to its lack of resources and the internal political

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<sup>93</sup> “The committee responsible for the report had detected various inadequacies and dysfunctions that affected the Spanish foreign service and which had been noted by the different relevant groups that had been consulted: civil organisations, business, unions, professional bodies, foundations and academic specialists” (*Comisión para la Reforma Integral del Servicio Exterior*, “*Informe sobre la reforma del Servicio Exterior*”, *MAEC*, June 20<sup>th</sup> 2005).

<sup>94</sup> See: *Orden AEC/2783/2006*, of September 7<sup>th</sup> which allowed for the publication of the Agreement of the Council of Ministers, approving measures to strengthen the external action of the State. The Royal Decree 1389/2007 October 29<sup>th</sup>, amending the Royal Decree 1412/2000 of July 21<sup>st</sup>, created the Council on Foreign Policy (*BOE 2007/10/30 A44026-44027*).

weakness of the Foreign Ministry. Consequently, each time that a problem or foreign policy crisis overstepped the strict boundaries of the MAEC, other politicians, (usually the vice-president of the Government) have assumed the task of coordinating with the rest of the ministries via *ad hoc* institutions. A significant example is illustrated by the civilian capacity to manage crises. Spain, like the rest of the European Union, understands international relations in a very different manner to the United States (in fact, the reticence over the use of force has been well-documented in studies).<sup>95</sup> The contrast lies in the distinct parameters of involvement that are employed before and after conflicts. In reality, and because of coordination problems at both European and national levels, there have been great problems making this system work: the MAEC has less ability to coordinate than other ministries such as Home Affairs, Justice, Health, Public Administration, or even Public Works, which all have basic civilian capacities to carry out these types of tasks. As a result, the whole weight of these ‘civilian’ missions end-up falling on to the shoulders of the Ministry of Defence: from Hurricane Mitch to the earthquake in Haiti, and even in Afghanistan the armed forces have built roads, repaired bridges and provided medical facilities for the civilian population. They have also acted as police and engineers, and have played the role of arbitrators in conflictive situations as if they were judges or diplomats.<sup>96</sup>

This lack of ability to coordinate leads to an easily-identifiable structural problem which can be explained by the fact that in the past Spain had few international relationships, and those that they did have were geographically concentrated. After undergoing a successful transition to democracy and international integration, Spain now faces a situation made up of new issues, new actors, new scenarios and new levels of performance. This new situation demands continuing reflection, flexibility and the ability to adapt, as well as improvement in the capacity to react. However, in the absence of

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<sup>95</sup> <sup>95</sup> Transatlantic Trends 2009, “*Informe de Resultados*”. German Marshall Fund. [http://www.gmfus.org/trends/2009/docs/2009\\_Spanish\\_Top.pdf](http://www.gmfus.org/trends/2009/docs/2009_Spanish_Top.pdf)

<sup>96</sup> See the references to Spain in Daniel Korski and Richard Gowan, “Las capacidades civiles de la UE en los Estado fracasados”. *Política Exterior*, núm 132 November/December 2009.

institutions capable of managing the debate and the decision-making processes, it is easy to understand how simple reaction to events and improvisation has tended to become the *modus operandi*.<sup>97</sup>

At the moment, the Defence Ministry has its own national security strategy which has been designed independently from the Foreign Ministry, and which includes a Council of National Defence presided over by the king, and to which the Foreign Ministry is invited. Logically, one wonders to what extent, in a world where risks and threats are interrelated and are characterised by a new and asymmetric nature (from H1 virus to Islamic terrorism or migration pressures), it makes sense to keep a Defence Council which does not cover all national security risks which cannot be dealt with by conventional defensive means. And even more so when the Interior Ministry also has its own security strategy with an important international dimension given that organised crime and terrorism are essentially global phenomena. Paradoxically, however, the Foreign Ministry has no strategy document for determining foreign policy or ranking priorities for government action (as is customary in neighbouring countries), and to date the Office of the Presidency has not assumed this task. Many people have called for a national security plan to examine the risks and threats facing Spain and her vulnerabilities, and for stable procedures to be designed for the collection, evaluation, and coordination of information as well as for the study of crisis management. When, at the end of 2009, Javier Solana was commissioned to coordinate this plan, the Government appeared to have acknowledged the problem and decided to confront it. This is undoubtedly a significant step forward and hopefully will lead to an improvement in the quality of Spanish foreign policy structures for planning, coordination and implementation.<sup>98</sup>

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<sup>97</sup> “We urgently need to improve our strategic vision and launch more and better initiatives, employing the appropriate human and material resources if we are to direct and anticipate the future” (in “Los objetivos de España en su acción exterior”. OPEX, Fundación Alternativas, Documento de Trabajo 21/2008).

<sup>98</sup> See: Artículo 8 de la Ley Orgánica 5/2005 de Defensa Nacional; “The Government puts Javier Solana in charge of national security” (“El Gobierno encarga a Javier Solana la estrategia de seguridad nacional”) El PAIS, 24/12/2009.

### 4.3 A consistent and ethical foreign policy

The third dimension of evaluation concerns the consistency between the principles and values that Spain defends within and beyond its frontiers. It is already acknowledged that Zapatero's legislatures have given much importance to the extension of civil, economic and social rights; indeed, up to a point where Spain has become a focus of international attention for its progressive policies. However, consistency between the domestic and the foreign has been severely limited: the promotion of human rights abroad has swung between some very active multilateral policies in the field of development cooperation coexisting with a network of bilateral diplomatic relations which, so far, have been extremely impervious to incorporating a human rights dimension into their agenda.<sup>99</sup>

On this theme, the long-awaited National Plan for Human Rights was finally passed in December 2008, coinciding with the 60<sup>th</sup> anniversary of the Declaration of Human Rights. This offered an excellent opportunity for an integrated view of human rights which was consistent in both the national and international sphere. The Plan has not yet been in force long enough for its compliance to be assessed, but from the beginning there has been a clear reluctance to consider political and civil rights as the core elements of external action in matters concerning human rights. Instead action has centred on the economic, social and environmental aspects of sustainable and equitable development.<sup>100</sup>

A similar phenomenon can be observed in the Master Plan for Spanish Cooperation (2009-2014) which does not include democratic standards in defining the eligibility of one country compared with another, not even as a

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<sup>99</sup> See: Amnesty International, Report on the Spanish Government's foreign and human rights policies. "¿How far has Spain met its human rights commitments abroad?" ("Hasta dónde llega el compromiso con los derechos humanos en el exterior?") November 2007; also the chapter "Spain" in FRIDE, "Survey of European Democracy Promotion Policies 2000-2006, Richard Youngs (ed) <http://www.fride.org/EuropeanDemocracy2000-06>, pages 159-182.

<sup>100</sup> Gobierno de España, Plan de Derechos Humanos. December 2008. <http://www.mpr.es/Documentos/planddh.htm>

criterion for increased aid or priority status. For several reasons, Spanish cooperation aid is uncomfortable with democratic conditionality: although it accepts that freedom is an essential element in achieving development, in the past it preferred to focus on 'institutional strengthening' or, more recently, on 'democratic governance'. The use of the term 'democratic promotion' can be avoided and in this way friction in countries such as Equatorial Guinea can be reduced. The fact of the matter is that, behind the usual rhetoric, the official guidelines of Spanish cooperation relating to the promotion of democracy abroad focus on specific objectives in which the reinforcing of public administrations and territorial de-centralisation predominate over strengthening civil society and encouraging social change.<sup>101</sup>

This emphasis on the construction of the State (especially in terms of its administrative capabilities) is undoubtedly consistent with the democratic experience in Spain (in the sense that the construction of an efficient public administration system in the seventies is widely considered to have been a key factor in Spain's successful transition to democracy). The problem is how to make the strategy of promoting democracy and human rights an integral part of the Spanish development plan when Spain's policy in this sphere only reaches those countries which have been specifically selected, ignoring the rest. To put it another way: as the policy of promoting democracy and human rights is not transversal across all foreign policy, but only part of the cooperation aspect of foreign policy, it is inevitable that there are important lacunae and countries which are ignored.

This split has important consequences: the Directorate General for Development Policy (DGPOLDE) designs strategies in the field of development cooperation (with an important multilateral dimension), but these policies do not have a transversal influence on the whole of Spanish foreign policy because only the Spanish Agency for International

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<sup>101</sup> See: *Plan Director de la Cooperación Española 2009-2012* approved by the Council of Ministers, February 13th 2009, Section 8.3.1 "Democratic Governability", page 108.

Development Cooperation (AECI) is responsible for executing them. Meanwhile, in parallel to this agency, there is the Human Rights Office, responsible to the Secretary of State for Foreign Affairs in the *MAEC*, which represents the position of the ministry in the negotiation of international agreements on human rights and is responsible for the management of bilateral exchanges on the issue (where they exist). However, this Office lacks sufficient authority and influence to set-up initiatives and planning for the rest of the geographic general directorates: Latin America, Mediterranean, and Sub-Saharan Africa – precisely those that work with non-democratic regimes.<sup>102</sup>

As a result, the principles and values actively promoted by Spain in multilateral forums concerning the promotion of democracy and human rights tend to be absent in bilateral relations, not only with large countries such as Russia and China where the margins of influence for Spain would (supposedly) be reduced, but with countries such as Colombia and Morocco (amongst others), where the margin of influence would be significantly higher.

In the case of China, for example, Spain has had a long history of ignoring human rights. Those responsible for foreign policy not only decided that Spain would be the first country to send their Foreign Minister to Peking after Tiananmen, but were amongst the first to call for a lifting of the arms embargo to China and to refuse to receive the Dalai Lama or his representatives, and were also amongst those that made the least noise when human rights activists in China suffered reprisals. Starting with a very low market share, poor investment penetration and a huge trade deficit, Spanish foreign policy has sought and achieved a 'strategic' partnership which has allowed the Chinese leaders to publically name the Spanish Government as "the best friend of China in Europe"; this has made the

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<sup>102</sup> For a detailed analysis on the assumption, priorities and budgets see: Kimana Zulueta, "Promoción de la democracia durante el Gobierno de Zapatero 2004-2008", *FRIDE, Democracia en context*, no. 13 February 2008.

Chinese market more accessible to large multinational Spanish companies and granted them more favourable terms than their western competitors.<sup>103</sup>

Similarly, in the case of Russia, with whom commercial and investment relations were originally in deficit, much care has been taken to avoid the most conflictive issues - evidence of electoral fraud, persecution of critical sectors of the media, and the harassment of human rights activists. In the agreement of a strategic association with Russia, signed in 2008 and coinciding with the Medvedev visit to Spain, the Government conceded to the position of subjecting bilateral relations to the “principle of non-interference in internal matters”, although Russia, as a member of the Council of Europe and the Organisation for Security and Cooperation in Europe (OSCE) could hardly claim immunity from democratic standards, the rule of law, or minority rights.<sup>104</sup>

In both Russia and China there was a hidden part to the agenda on bilateral relationship, concerning, for example, the issue of separatism (from Taiwan to Tibet, Chechnya or South Ossetia). Spain, having made a false reading (internally) of the Kosovo conflict and their declaration of independence in February 2008, found itself allied in the International Court of Justice with the most reactionary countries in terms of human rights and the treatment of minorities, despite the fact that Spain’s record was absolutely irreproachable from the point of view of its international commitment to human rights. Spain’s position on Kosovo has brought tangible benefits to its relationships with China and Russia, but it is clear that Spain’s close alliance with Serbia has damaged the image of Spanish foreign policy in the eyes of the EU members most commonly associated with the promotion of democracy and human rights.<sup>105</sup>

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<sup>103</sup> “*Los tambores de la historia*”. José Eugenio Salarich - *Política Exterior* N°127 – 2009; “*China y España establecen una Asociación Estratégica Integral*” <http://spanish.mofcom.gov.cn/aarticle/subject/sinohispana/lanmuxbyd/200612/20061204112017.html>

<sup>104</sup> The Declaration of Strategic Association between Spain and Russia, March 3<sup>rd</sup>. 2009, point 2.

<sup>105</sup> Jessica Almqvist “The Politics of Recognition, Kosovo and International Law (WP)” *Real Instituto Elcano* WP 14/2009 - 16/3/2009

In ethical terms, Spain is a country that has modernised its foreign policy significantly, especially during the two legislatures of Zapatero from 2004 until the present. This period of foreign policy has been characterised by a strong commitment to international legality, human rights, multilateralism, understanding between cultures, and development cooperation. Spain has risen to rank seventh in the world in the volume of its development aid, which places it within the UN system on the front line of contributors to the struggle against poverty. This has to be contrasted with lower than average military spending compared with other NATO members, and this budgetary item has been still further reduced by the economic crisis (although the commitment to increase development aid has been maintained). For a country that only 25 years ago was a recipient of international aid, the more than 5,200m€ that it plans to dedicate to cooperation in 2010 shows the strength of its determination and the considerable effort that has been made; and this has been made possible, and is the result of, a broad national consensus.<sup>106</sup>

Taking these two issues together (domestic human rights and foreign development cooperation), Spain has shown that not only has it become Europeanised in general terms, but that within the EU membership it has adopted the criteria and exacting standards normally assumed by the Scandinavian countries, which is why the contradictions of Spain's foreign policies are so surprising. In the domestic and international field Spain defends progressive principles and values, but on the bilateral level of foreign relations, and in particular regarding the promotion of democracy and human rights, it behaves like an emerging or non-European country such as Brazil or South Africa, where positions on these issues are relativistic.<sup>107</sup> Only in this context can we understand the response of the Director General for Sub-Saharan Africa to criticism over the recent visit of a large Spanish delegation when he argued that Spanish Guinea was an "African democracy with parameters" (when the fact is that in Africa there are democracies, from

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<sup>106</sup> *Plan Anual de Cooperación Internacional (PACI 2010)*, approved by the Council of Ministers February 12<sup>th</sup> 2010.

<sup>107</sup> See the polemic meeting of Mahmud Ahmadiyead with President Lula (*El País* 23.11.2009).

Ghana to South Africa and Mozambique, who lack these supposed parameters).<sup>108</sup>

The case of Equatorial Guinea, like that of Cuba, adds empirical evidence to the explanation of Spanish policy as a simple transfer of its own national experience: “allowing countries to grow will inevitably lead to their democratisation”. However, we know that there is no automatic correlation between wealth and democracy – especially in countries where economic development depends on natural resources and where, in fact, a diametrically opposite reaction can occur, i.e. that development can easily become a source of renewed authoritarianism.<sup>109</sup>

It is from this standpoint that the denial to introduce elements of conditionality (both positive and negative) into Spanish bilateral relations must be viewed. The mainstream view is that economic sanctions, or schemes to withdraw the benefits of cooperation already granted (negative conditionality) from regimes which are not evolving democratically - or which are regressing - is counter-productive, given that they delay the economic development which leads to change. But at the same time there is no great positive discrimination in favour of those countries which are making satisfactory progress (positive conditionality), and this is because Spain does not want to damage bi-lateral relations with third countries with whom it wishes to remain as a privileged interlocutor (as occurs in Latin-America).

The result of all this is that when it comes to bilateral relations, multilateral commitments on human rights become diluted and few results are produced, leaving the dubious results of ‘discreet management’ as the only policy instrument. It is abundantly clear that there are many means available to promote democracy: from support and funding of the media to the direct financing of public civil organisations (including political parties, trade unions

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<sup>108</sup> “Moratinos viaja a África con Fraga y sin el Pocero”. Diario EL PAIS, 9/07/2009.

<sup>109</sup> “La transparencia como remedio a la maldición de los recursos: un consenso global y las asignaturas pendientes de España”, Nils-Sjard Shulz, FRIDE, *Desarrollo en contexto*, núm. 10, 14/05/2007.

and associations). It is surprising, therefore, in a country like Spain, which has benefited so much from the support of other countries, that the political parties (via their foundations) should play such a weak role in Latin America and Maghreb in backing activists fighting for human rights and processes of democratisation. Even Spanish companies with a global presence have not invested in governability and institutions, when, in fact, they should be the first in wanting a network of foundations which would encourage open societies. Spain could play a much greater role in Latin America by using two of its major assets: first, the fact that its domestic policies are very advanced – so it can hardly be accused of acting on double standards; and second, by the use of its cultural ties to increase the likelihood that the example set by Spain on extending human rights might be followed.

Another area where it is possible to detect major conflict relates to asylum where accusations from human rights organisations are particularly striking. Spain has not only been a country of emigrants, but a country of exiles. However, the generosity Spain has shown to its immigrants has not extended to its asylum policies. Consequently, in contrast to the Scandinavian countries which Spain likes to be bracketed with, Spain is a country of immigration (up to 5 million during the last decade) but not one of asylum. Very recently, the Human Rights Office launched a financial plan for receiving human rights activists at risk in other countries, but the fact remains that the number of applications for political asylum in Spain is far below the European average. By imposing such severe asylum policies, Spain has relinquished the possibility of becoming an element of democratisation abroad.<sup>110</sup>

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<sup>110</sup> See the programme of subsidies for financing activities and projects promoting and defending human rights (*Orden AEC/799/2007* March 12<sup>th</sup>); “El texto de la nueva ley no recoge garantías fundamentales para el cumplimiento del derecho de asilo en España” (*Frontera 0*, núm. 9 Autumn 2009); *INFORME CEAR 2007 - CEAR* exposes the crisis of Spanish asylum rights.

## Conclusions

1. During 2009, as in the rest of the first decade of the 21<sup>st</sup> century, foreign policy has been the object of political wrangling and party debate. With the exception of a precarious all-party consensus for the period of Spain's presidency of the EU, foreign policy has been used both by the opposition to damage the Government, and by the Government to reinforce their own ideological identity amongst their supporters.
2. Although there is no specific approval rating for foreign policies, there are particular tools for arriving at such an evaluation. According to these instruments, while there is no general dissatisfaction, there are three matters where support is unclear: Turkish membership of the EU; Spain's military presence in Afghanistan; and Cuba, where those in favour of maintaining or increasing the pressure on the Castro regime have a clear majority, even on the left.
3. A weakness of parliament is highlighted by the quality of control it exercises over foreign policy. Given the dynamic of vitriolic criticism and the use of foreign policy to damage the Government, the sessions of parliamentary control have sometimes served more as a public showcase for party disagreements than to offer society the chance to hear a real debate on central issues. There have been two especially important issues in 2009: the withdrawal of troops from Kosovo and the capture of the fishing boat, *Alakrana*. The problems of parliamentary control over foreign policy and political responsibilities were evident in the *Haidar Affair*. Independently from the differences of opinion on Government policy with respect to Morocco and Western Sahara, Parliament was unaware of the true state of play during the episode of the crisis and Haidar's hunger-strike, and as a consequence the Council for Foreign Affairs had to make-do with the explanations given by the minister leaving them in no proper position to discuss the situation. These examples illustrate a more general phenomenon: the

continuing lack of transparency and the difficulty of access to public information in the field of foreign policy. This is accentuated for two reasons: the fact that many of these relations occur abroad and so are out of the public limelight; and the organisational weakness of civil society. Even in the case of development cooperation, which accounts for a huge amount of public spending, the mechanisms of accountability and transparency are still very new.

4. In terms of effectiveness, problems have arisen over the planning, execution, and coordination of foreign policy. Despite the electoral promises of the PSOE, the Government has not fully put into effect the reform process for the Foreign Office, although they have opened new embassies and consulates in African and Asian countries which had so far received little attention.
5. In actions relating to the promotion of democracy and human rights there is a lack of consistency and integration between the multilateral and the bilateral sphere regarding values. This discrepancy is undoubtedly the most important problem because it implies a relative delay in the modernisation of our foreign policy compared with those of countries which Spain aspires to emulate. Taking the extension of human rights within Spain together with its development cooperation abroad, Spain has shown that not only has it Europeanised in general terms but that, compared with its EU partners, it had adopted the most demanding of criteria and standards normally reserved for the Scandinavian countries. For this reason, there is a noteworthy contradiction between a foreign policy that internally and multilaterally defends very progressive values and principles but which in the bilateral sphere of foreign policy – and especially in relation to the promotion of democracy and human rights – acts in a similar way to emerging nations, whose position on these themes is relativist.

# 9 GENDER AND ECONOMIC INEQUALITY IN SPAIN

## 1-Introduction

On the 24<sup>th</sup> of March 2007 the Organic Law 3 / 2007 of the 22<sup>nd</sup> of March for the Equality of Women and Men was approved in the Spanish Parliament. Commonly known as the Equality Law, it brought into effect the right of "equal treatment and opportunities between men and women, in particular by eliminating the discrimination against women whatever their circumstances or conditions in all areas of life (...)". As stated in the Explanatory Memorandum of this law, equal treatment between men and women represents not only a basic right contained in Articles 9.2 and 14 of the Spanish Constitution, but also a fundamental principle protected by international treaties.<sup>111</sup>

Gender equality has been made a goal in all the policies and actions of the European Union and its member states since the entry in vigor of the Amsterdam Treaty in 1999. During the decade since this ruling some important changes have taken place, providing a legal framework to aid the implementation of more effective programmes to help fight the various types of discrimination. Amongst these are three important directives passed in the year 2000 (Directive 2000/43/EC, introducing the principle of equal treatment between people irrespective of racial or ethnic origin; Directive 2000/78/EC establishing a general framework of equality of opportunity in employment and the work place; Directive 2002/73/EC ruling on the principle of equal treatment between men and women in training and employment; and Directive 2004/113/EC relating to equal treatment between men and women in the access to goods and services, and their provision).

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<sup>111</sup> Most notably the United Nations Convention of 1979, ratified by Spain in 1983, on the elimination of all forms of discrimination against women.

The Equality Act passed in Spain in 2007 primarily adopted the two EU directives specifically related to gender equality (those approved by the EU in 2002 and 2004). The law ratified the concepts of 'direct' and 'indirect' discrimination originally incorporated in the Directive 200/43/EC, opening the way not only to measures that guarantee respect for the principle of formal equality, but also ones that combat attitudes, criteria or practices that appear neutral but in reality place women at a disadvantage to men. As stated in the Explanatory Memorandum, the full recognition of equality in the eyes of the law had not been enough to eliminate such phenomena as wage and employment discrimination, gender violence, or the scarcity of women at the hub of political and social decision-making. Consequently, genuine equality policies still have a big part to play in all European countries.

One of the basic guidelines of the Equality Act refers to the transversal nature of the principle of equal treatment between men and women (art. 15) with the idea of extending its scope to all areas of social life. Additionally, Article 20 refers to the need to systematically adapt studies and statistics to include a gender dimension to the collection and use of economic and social data. This chapter offers a review of current data on income distribution in Spain from a gender perspective in order to provide updated information on the economic inequalities between men and women. For this purpose, we have used the Survey of Living Conditions (*ECV*), which is the only source offering relatively current information on income, living conditions, and employment. Other sources can provide more detailed information on demographic aspects and work activity but lack the ability to integrate it with income data.

The inclusion of a gender perspective in income distribution analysis requires a review of some assumptions which are contained in traditional studies. These assumptions tend to hide the differences in income and labor participation among household members. Although the study of inequalities within the household raises some problems, the results obtained from it provide a great deal of valuable additional material which can be very useful

for making a satisfactory evaluation of the distinct economic vulnerabilities of men and women in contemporary Spain.

## **2. Methodological issues**

The measurements of poverty and inequality obtained in conventional studies are based on the assumption that the home is the most appropriate unit of analysis to determine the economic position of individuals within a given population. Thus, each individual - male or female, adult or child - is assigned the income of the household in which he or she lives, adjusted to the size and characteristics of that household. The main argument supporting this assumption is that the family ties or shared household relationships which link members living in a same household foster the sharing of economic resources in such a manner that living standards do not depend so much on the individual's income but on the overall revenue of the household. Thus, the economic welfare of children and adults who receive no income would be the same as those members who receive an individual income.

But although the choice of the household as the unit of analysis smoothes away some difficulties, it also raises a number of specific problems. The one which has excited most interest in the academic literature is the choice of equivalence scales which allow a comparison to be made between the living standards of people living in households of different sizes and composition, taking into account the different needs associated to factors such as the number of members, age, or other variable circumstances linked to each household, as well as 'scale economies' which are implicit in the possibility of sharing certain expenses.

A second, less extensively-covered question covers the need to establish a hypothesis regarding the distribution of domestic income within the family. Conventional analysis is based on the hypothesis that an equal distribution of income within the household is the least problematic (i.e. the most realistic), or perhaps the only possible one given the fundamentally non-observable nature of the internal distribution of economic resources. This means the inequality under examination only refers to the inequality *between* households since the

home is viewed as a unit within which there are no inequalities. The economic position of the household members is the same regardless of who earns the income, who takes spending-decisions, and who does the consuming. This perspective, although justifiable in a global study of income inequality, is clearly insufficient to examine economic differences related to gender. It has sometimes been noted that gender inequalities, or other imbalances equally associated with position within the family unit, cannot properly be investigated without opening the '*black box*' of the household.

Before addressing the current situation in Spain, it should be emphasised that economic inequalities within the household can include various dimensions which may be susceptible to various options of empirical analysis.

To begin with, there may be gender disparities in accessing economic resources, and these can lead to differences in levels of consumption and the possibilities of obtaining goods. These differences are difficult to evaluate using the income and consumption surveys commonly used for studies of poverty and inequality due to the absence of information regarding the covering of necessities or access to consumer goods.<sup>112</sup> Gender inequalities in this area can be related to differences in decision-making capacity about economic resources (spending and saving decisions, management of the household budget, investments, etc). Studies have been carried out in other countries which explore the above-mentioned inequalities using qualitative techniques, such as in-depth interviews with household members, or focus groups.

A second important source of inequality is that which affects the use of time between the different genders in the home: the distribution of work and leisure, time devoted to paid work *versus* unpaid work, full or part-time work, etc. This disparity in the use of time between men and women can in part be studied using different sources which contain information about the

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<sup>112</sup> The continuous survey of family income (*ECV*) does not collect individualised information about consumer spending. The *ECV* almost always investigates deprivation of a household in its entirety, according to the opinion of the household member being interviewed.

employment status of household members (such as *ECV*, the Household Budget Survey or the Labour Force Survey). In addition, there are non-periodic surveys addressing this issue, namely, the Time Use Survey conducted by the National Statistics Institute (*INE*) in 2002-2003.

Thirdly, there are significant differences in the earning ability of different household members potentially correlated with gender (the perception of their own earnings and the amount and type of income). These inequalities can be studied, in general, from *INE* surveys that include individual questionnaires in which adult household members (over 16 years old) record their income. This is the methodology employed by *ECV*, although some quantitatively insignificant family income components are amalgamated.<sup>113</sup>

Finally, the household can also obscure systematic differences in the level of wealth and economic rights generated by members of the family unit. This is an important area for the analysis of different degrees of vulnerability between men and women facing either predictable future events (such as retirement) or unforeseeable events (such as divorce) during the course of their lives. An important aspect of this area concerns pension rights and other social benefits linked to workers' social security contributions and work record. Some information can be obtained about this from various data sources (such as Social Security records or surveys conducted by the *INE*).

Therefore an analysis of inequality from a gender perspective must complement the conventional approach with a study in which the unit of analysis is not so much the household as 'the individual within the household'. The *ECV*, as will be explained later, collects data which addresses some of the previously-mentioned issues, particularly those related to the work situation and the perception of earnings of individual family members. Before examining these, we offer a brief summary of the general trends in income distribution for the period 2004-2008, and an examination of the position of women in relation to income distribution applying the conventional focus on inequality and the risk of poverty. Following this, an analysis will be made of the economic inequalities

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<sup>113</sup> This basically applies to capital and property earnings and certain social benefits (such as family, housing, or social assistance benefits).

between men and women in terms of individual incomes. Finally, we will investigate inequalities in salaries and position in the labour market which today constitutes one of the underlying explanations for the particular economic vulnerability of women.

### **3. Income distribution in Spain 2004-2008**

Table 1 lists the main indicators of income distribution taken from information collected by the *ECV* during the period for which information from this source is available. Although the reference period for income only relates to 2003-2007, which is a short time to study possible changes in income distribution trends and, in particular, to examine the effects of the economic crisis, and given that it is the income received in the year prior to the year in which the interviews took place, nonetheless there are some general features which can provide a framework for the subsequent analysis.

During the period 2004-2008, Spain registered a slight and statistically insignificant increase in inequality as measured by the *Gini index*. However, the index registered values of approximately 0.30, which are relatively high if compared with the corresponding rates in the majority of EU member countries. There was also no great variation when the distance indicators are examined for the period in question, although the co-efficient between household income at the tenth percentile and average income shows a slight improvement since 2006.

#### **Table 1**

##### **Basic indicators of income distribution during the period 2004-2008**

% of total variation

Average equivalent income

(Scale=OECD modified)

##### **Inequality**

*Gini* co-efficient

##### **Relative poverty (% of people)**

Average

## **IPREM threshold (% of people)**

### **Material deprivation (% of people)**

Three or more basic problems

### **Persistent poverty (% of people)**

Income < 70% of average and material deprivation

*Notes: The income data in all cases correspond to income gained in the year preceding the interview (2003-2007). The extreme values of the distribution were re-codified in 1% of the average income equivalent and by 10 times the median household income. The equivalence scale used is the modified OECD scale (weights = 1 first adult, 0.5 additional adults, 0.3 under 14 year olds). Indicators D90/D10, D90/D50 and D50/D10 are the ratio of income received by individuals at the 90th, 50th and 10th percentiles of distribution. The threshold IPREM base indicator draws on the Public Multiple Effect Income fixed for the base year of income. For 2003's revenue, prior to the creation of IPREM, minimum wage was calculated on an annual basis. Material deprivation describes households who conform to at least three of fourteen selected indicators of deprivation according to the methodology described in Martinez and Navarro (2009).*

*Source: ECV 2004-2008 and author's own data.*

It is worth noting, with reference to the poverty risk, the significant increase in equivalent nominal average income during the period (23.5%). Moreover, there was a moderate reduction in relative poverty indicators as measured by community standards. This fact was consistent with the slight decrease of the inequalities at the bottom of the distribution. Also, from 2006 onwards, the percentage of the population living in households with incomes below 30% of the average (extreme poverty threshold) registered a slight reduction. Again, in this case it must not be forgotten that the relative poverty indicators, notably those commonly employed for international comparison (60% of equivalent average income) are high (always above 19%) when compared with neighbouring countries.

The lower part of Table 1 shows the evolution of various alternative measures of poverty risk which are all based on reference levels which are not purely relative (as in the case of *the IPREM –Indicador Público de Recursos Múltiples*) and on direct indicators of living standards (in the case of indices of material deprivation and persistent poverty). It can be appreciated how the percentage of the population receiving income below the IPREM decreases by nearly 25% over the period, from 20.2% in 2004 to 15.4% in 2008; and also that there is almost a 30% decline in the percentage of people with income below 75% of IPREM (from 10% in 2004 to 7% in 2008). Similarly, there was a visible improvement in the indicators of material deprivation and persistent poverty risk. However, there was a small but significant rise in the percentage of people suffering three or more of the basic problems connected to material deprivation in the final year under examination; this could constitute the first symptom of difficulties associated with the economic crisis. This interpretation is reinforced when we consider that two of the indicators showing deterioration between 2007 and 2008 are the percentage of households where people are experiencing great financial difficulties in reaching the end of the month (increasing from 10.2% in 2007 to 12.5% in 2008), and people with arrears of rent or mortgage (from 2.9% in 2007 to 3.8% a year later).

#### **4. Gender and income distribution**

The conventional study of income distribution does not portray a realistic analysis of economic inequalities between men and women because it assigns economic equality to household members. This section presents the results of the conventional approach, drawn from information collected by the *ECV* for each member of a household, as an introduction to the more detailed analysis of the rest of the chapter.

##### **4.1. The position of women in overall income distribution**

Global income distribution analysis, applying the usual assumptions of conventional poverty and inequality measurements, presents only slightly unfavorable results for women if we take into account that the gender

composition for the various deciles of income (Graph 1) largely coincides with that of the general population ( 49% men and 51% women); although certainly the three lower deciles contain more women than would correspond to a purely random sample (especially the second case, made up of 56% women). In fact, a breakdown of gender inequality suggests that the effect of this variable is negligible as an explanation for overall inequality as measured by the conventional approach.<sup>114</sup>

### **Graph 1**

#### **Composition by gender of the deciles of equivalent disposable family income, ECV – 2008**

Women                      Men

Percentage

Tenth

Ninth

Eighth

Seventh

Sixth

Fifth

Fourth

Third

Second

First

Note: The distribution assigns the disposable household income, adjusted by the modified scale of the OECD, to each household member

*Source: EVV – 2008, and author's own data*

In line with the earlier results, and according to an evaluation using official European standards based on a threshold of 60% of equivalent average income, the risk of poverty for men and women is also similar. Table 2 shows

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<sup>114</sup> The 2008 data show that inequalities between men and women only account for 0.1% of total inequality.

21% of women receiving incomes below the threshold compared with 18% of men. Even this moderate difference disappears when the threshold is lowered to levels associated with severe risk of poverty (30% of average income) which affects 4% of the population, regardless of gender. The age breakdown shows that the differential rises slightly after the age of retirement, a stage of life in which, on the other hand, the two sexes have the highest rates of poverty risk at the 60% threshold (but not at the 30% threshold, due to the minimal income guaranteed by the basic pension).

**Table 2**

**% of people suffering from low income and/or material deprivation by gender and age, 2008**

Demographic weighting (%)			
Low income			
Material deprivation			
Low income (U70) & material deprivation			
Men			
Boy		under	18
Youth			18-29
Adult			30-44
Adult			45-64
Adults			65-74
Adults			75+
<b>Total males</b>			
Women			
Girl		under	18
Youth			18-29
Adult			30-44
Adult			45-64
Adult			65-74
Adult			75+
<b>Total women</b>			

## **TOTAL**

The scale of equivalency employed is the modified OECD one. U60-threshold defined by 60% of equivalent average income. U30-threshold defined by 30% of equivalent average income.

*Source: ECV – 2008, and author's own data.*

Table 2 also gives the results of the two alternative measures of poverty risk mentioned above: one is based directly on the indicator of basic deprivation included in the survey, and the other combines the criteria of low income with that of material deprivation. In both cases, the results are similar to those obtained using low income thresholds. This should not be surprising if one considers that the indicators of material deprivation are studied, as a rule, for the household as a whole, drawing on information provided by the family member responsible for completing the questionnaire.

### **4.2. The situation of households headed by women**

Most studies on the socio-demographic profile of poverty use classifications based on the characteristics (age, gender, work, etc) of the person defined as the 'head' of the household. The criteria employed to select this head of household may vary from one study to another but one of the most common is to select the main bread-winner - defined as the member of the household who earns the largest part of the joint income - as the reference. This method is the one chosen in this instance. Other possible methods are to select the person responsible for the home, the eldest member of the household, or the person that the members of the same household designate as 'head'. The results drawn from an analysis in which the main breadwinners were men are substantially different from those in which the main breadwinners were women.

Analysis based of the characteristics of the main bread-winner almost always show differences between households headed by men and those by

women. Previous studies carried out in Spain demonstrate that the sex of the principal bread-winner continues to be an explanatory factor for the level of income and the risk of poverty, both in terms of income and material deprivation. Moreover, income differences associated with gender are exacerbated in retirement, with particularly high poverty risk rates in the case of households headed by an older woman living alone. As we will see, data from the latest *ECV* confirm these results. But before examining this issue, it may be useful to highlight the imbalance - which appears resistant to the intensity of economic and social change - between the proportion of male and female heads of households.

### **Only three out of ten households are headed by women**

When comparing households headed by men with those headed by women it is impossible to ignore the fact that still, in the year 2008, only a minority of women are the main bread-winners in the household to which they belong; this fact in itself gives a clear indication of the perseverance of the important disparities in work and income between the sexes in spite of the advances (formal and real) achieved in the field of equality over the last decades.

If a closer examination is made of this issue it can be seen that according to the *ECV* there were approximately 16.6 million households in Spain in 2008. In just over 7 of every 10 households the main bread-winner was a man: some 11.7 million households, which comprised approximately 34 million people. The remaining 29% were supported by women: some 4.8 million households, accommodating approximately 11 million people (the average size of which was 2.3 members compared with the 2.9 members of households supported by men).

### **Table 3**

#### **Distribution of male and female bread-winners according to marital status and age, 2008**

%

Male breadwinner

female breadwinner

**Marital status**

Single

Married

Divorced/separated

Widow/widower

**Age**

Below 65

65 and above

**Total** (11.7 million) (4.8 million)

*Source: ECV – 2008, and author's own data*

Households supported by women are not only fewer and smaller in size than those supported by men they also have distinct characteristics. When examining marital status (Table 3) it is important to note that 69% of male bread-winners are married compared with only 32% of female. In contrast, only 7% of male bread-winners are widowed or divorced compared with the figure of 40% for females. Thus, it appears that a high proportion of households headed by women originate from family break-down or the death of a spouse or partner. Moreover, this explains the higher average age of female heads of households: almost a third of them are over 65, compared to only one fifth of male breadwinners (Table 3). A more detailed analysis of the *ECV* data show that households supported by women over 65 are mainly widows living alone (71%).

**Households sustained by women are at greater risk of poverty**

Graph 2 shows the rates of poverty risk according to the gender of the main breadwinner using data from the most recent *ECV* survey. It can be observed that whichever threshold is under consideration, households headed by women present indications of poverty between two and four points higher than those experienced by households headed by men. In addition, it is worth noting that in proportional terms the difference increases as the reference level of income diminishes.

## Graph 2

### People at risk of poverty according to sex of main bread-winner for different thresholds, 2008

Women                      Men

%

Threshold 60% .....

*Source: ECV – 2008 and author's own data*

Data in Table 4, which breaks-down the previous data into age groups, also show the different profiles of a life cycle in terms of age and poverty threshold levels. Using the average baseline of 60%, the most disadvantaged socio-demographic group of households is that supported by women of 65 or older: 37.6% of these households have incomes below the poverty threshold - almost double the national average and eight points higher than households supported by a male of the same age. For the lower thresholds – those defined by 40% or 30% of the equivalent average income – the risk of poverty for households composed of old people visibly diminishes (although the gender differentials persist) and, in contrast, increases for the youngest. Moreover, this increase is more significant in households where the main bread-winner is a woman of 45 or under: 6.2% of these households have incomes which do not exceed 30% of the national average, compared to 3.6% of their male counterparts in the same age range.

## Table 4

### Different poverty thresholds of people on low incomes, according to age and gender of the main bread-winner, 2008

% of population below threshold

Relative incidence

#### Under 45

Male

Female

#### 45-64

Male

Female

**65 and above**

Male

Female

**Total**

*Note: The equivalence scale used is the modified OECD. The relative incidence ratio represents the resulting quotient of the poverty rate of a particular group and the overall poverty rate expressed in base 100.*

*U60 = threshold defined by the 60% of the average income equivalent.*

*U50 = threshold defined by the 50% of the average income equivalent.*

*U40 = threshold defined by the 40% of the average income equivalent.*

*U30 = threshold defined by the 30% of the average income equivalent.*

*Source: ECV – 2008, and author's own data*

Thus, in light of this data, there is a greater risk of moderate poverty for households supported by older women, and an extreme risk of poverty for those supported by young adult females. To correctly interpret the results it should be borne in mind that poverty rates for the older groups are very sensitive to particular threshold levels due to the high concentration of pensioners in the low to medium area of the distribution. This produces great variations as the level decreases (as occurs in the case of older men as the level passes from 50% to 40% and in that of women when the barometer passes from 60% to 50% of average income) and according to the year under investigation due to the effects of economic growth. In any case, most importantly, this data reflects a situation of particular economic vulnerability for individuals and families that rely on low pensions, such as those of widowhood.

### **The gender differential persists with alternative definitions of poverty risk**

The poverty risk rates set out in Table 4 have been calculated using the most common definition of income. This computes monetary income obtained from various sources (salaries, pensions, etc) by members of the

household, adjusted by an equivalency scale. As has sometimes been argued, this variable presents some important limits to the analysis of economic inequality and poverty risk, and explains why this field has witnessed a growing use of alternative methods of measuring resources and/or direct indicators of the economic situation of households.

One of the most important aspects is related to the mode of tenure and the associated costs of housing on a given amount of income, which clearly conditions the potential living standard. For years the EU has been insisting on the need to take into account the imputed rent for home ownership in the estimates of poverty risk for different social groups. In the case of Spain, where property-ownership is relatively high, taking imputed rent into account can significantly alter the resultant levels of poverty. Additionally, there are differences according to the age profile which significantly benefit older people.

This conclusion is usually confirmed if we use a definition of income which excludes the amount allocated to housing costs. This approach has traditionally been followed in countries such as the UK, because these costs tend to decrease in line with the increase of the age of the main breadwinner. Table 5 confirms that this is indeed the pattern demonstrated by *ECV* data for both men and women: the average cost of housing per household, excluding possible mortgage repayments, is less than 200€ per month in households maintained by people of 65 or over, and this is less than half the housing expenditure of households with a young bread-winner (under 45 years old). If the repayment of a mortgage is included, the difference is even greater: around 540€ per month for young households compared with 180€ for the older ones.

#### **Table 5**

**Mode of tenure and housing costs according to gender and age of the main bread-winner, 2008**

Renting	Mortgage	Housing costs
% of households renting		
Average rent		
% of households with mortgages		
Average repayment		
Without mortgage repayments		
Total costs*		
<b>Age under 45</b>		
Male		
Female		
<b>Age 45-64</b>		
Male		
Female		
<b>Age 65 and over</b>		
Male		
Female		
<b>Total</b>		

*Note: (\*) The total housing costs are an approximate calculation taken from information from the survey on housing expenses (excluding mortgage repayments). Mortgage repayment and interest relate to the year preceding the interview.*

*Source: ECV-2008 and author's own data.*

The first columns of Table 6 show how the levels of household poverty risk change depending on the age and gender classification of the main breadwinner, using the above-mentioned alternative definitions of household income including imputed rent (second column), and subtracting the early concept of housing costs (third column). It can be observed that the inclusion of imputed housing rent for owned-property reduces the overall rate of poverty risk to 15.5% from the initial 19.6% resulting from the use of the concept of conventional rent (first column). The rate of poverty risk for households

supported by old people slightly decreases; and the rate for those households where a woman provides the main support is particularly effected, reducing it by more than half: from 37.6% to 14%. It must be remembered that a large proportion of these households are widows living alone: the inclusion of an imputed rent in accordance with the value of the house improves the position of this group more than any other. These conclusions stand if the previous concept of housing costs is deducted (third column), although for somewhat higher poverty risk levels. In contrast, the issue of imputed rent and housing costs clearly worsens the relative position of households headed by young woman (under 45 year olds).

**Table 6**

**Various indicators of economic vulnerability according to age and gender of the main bread-winner, 2008**

Low income (U60)    Material deprivation    Persistent poverty

<b>Age</b>	<b>below</b>	<b>45</b>	
Male			
Female			
<b>Age</b>		<b>45-64</b>	
Male			
Female			
<b>Age</b>	<b>65</b>	<b>and</b>	<b>over</b>
Male			
Female			
<b>TOTAL</b>			

*Note:  $Y$  = disposable income (original);  $Y+AI$  = disposable income + imputed rent;  $Y + AI-GV$  = disposable income + imputed rent – housing costs (excluding mortgage repayments)*

*Source: ECV-2008 and author's own data.*

The last two columns of Table 6 show the percentage of the population in each group that demonstrates signs of material deprivation (penultimate column), and the last column shows the percentage that shows signs simultaneously of both low income and material deprivation.<sup>115</sup> In both cases, there is also an improvement in the situation of the elderly in comparison to the results based solely on monetary income. However, it must be emphasised that this improvement is much clearer in the case of men, while households headed by older women have much higher levels of material deprivation and persistent poverty which are well above the national average.

## **5- Personal income and inequality**

The special economic vulnerability of households headed by women has its origin in the significant gender inequalities that still exist in individual incomes. As explained in the introduction, the conventional approach assumes that the incomes obtained on an individual basis are pooled so as to meet the household members' needs jointly and equally. All members would therefore enjoy the same economic position and face the same risk of poverty. However, this approach ignores the different economic roles of men and women within the family unit, which may in fact have a significant impact on personal economic vulnerability.

In this section the issue is examined directly using data from the *ECV*. The survey investigates incomes received by household members of 16 years of age or over from wages, self-employment, pensions, and other social

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<sup>115</sup> Both concepts are measured in the manner described earlier in section 2 of this chapter based on the methodology designed by Martínez and Navarro (2009).

benefits (unemployment, sickness, etc). These individual incomes account for about 97% of global disposable household income according to figures from the 2008 *ECV*. On this point Table 7 reveals a prime and significant gender asymmetry: 91.5% of adult males (16 years +) receive their own income compared to only 71% of females. Thus, almost 30% of adult women lack their own income from salary, self-employment or social benefits.

**Table 7**

**Type of incomes received by men and women aged 16 or over, 2008**

Percentage	Male	Female
Total		
Receives own income		
No personal income, but a share of collective income		
No income whatsoever		

*Source: ECV – 2008, and author's own data.*

The remaining available household income (approximately 3%) comes from sources of income which the *ECV* only analyses collectively (not individually) i.e. for the household as a whole. This is essentially income from capital and property, and some less important sources (family loans, home-based loans, social assistance benefits, private transfers from other households, etc.). Although more than four out of ten households receive some income of this type (particularly, income from capital) the average declared amount is very low, which explains its low percentage level in the overall household income. If each adult member of the household was given an equal share of this collective income, the percentage of people without any income would be reduced to 3.2% (5% - women, and 1.4% - men). It should be emphasized that almost 25% of adult women only receive their corresponding share of this less important income. As will be observed in the following section, this



Source: ECV - 2008, and author's own data.

We will now examine the distribution of income assigned to each adult from income obtained individually (through work, pensions and other social benefits) plus the equal share of income designated as 'collective'. Graph 3 highlights the significant gender inequality of this distribution. Unlike the focus taken by the conventional approach, this data does not assume an equal distribution of economic resources within the household. 75% of people in the lowest decile of income are women, and this percentage rises to 77% in the second lowest decile. At the opposite extreme, only 30% of those with the highest personal incomes are women.

### Graph 3

#### **Gender composition of the deciles of disposable income equivalent, (ECV - 2008)**

Women                  Men  
%

Source: ECV – 2008, and author's own data.

According to the *individual* distribution of income described above, women have - on average – lower and more unequal incomes than men (Table 9). The top of the table clearly illustrates this: the index of income inequality obtained by women amounts to 0.5297, compared to 0.3794 for men. Applying the threshold of low income commonly used at the European level to assess poverty risks, it can be seen that 45.2% of women receive incomes of less than 60% of the average, a situation experienced by only 17.4% of men. The bottom of the table gives the same indicators, but in this case referring to the more restricted sphere of men and women who are the recipients of earned incomes, pensions and other social benefits which can be individualized. It is not surprising to see that gender differences are mitigated – although they do not disappear altogether. It is particularly significant that 35.4% of the female workers or pensioners receive an

income which does not exceed 60% threshold of the average, compared to 15.4% of men. Inequality and poverty risk of men and women

**Table 9**

**Inequality and poverty risk for men and women according to personal income distribution, 2008**

Men	Women	Total	adults
<b>All</b>			<b>income</b>
-	Relative	average	index
-	Inequality:	Gini	
- Risk of poverty: U = 60% of average			
<b>Adult recipients of personal income (work, pensions, benefits, etc)</b>			
- Relative average income			
-	Inequality:	Gini	index
- Risk of poverty: U = 60% average			

*Notes: The distribution assigns to each household member the individual income earned (salaries, pensions, self-employment, etc) plus the proportion of joint household incomes (capital, etc). The minimum and maximum values of the distribution were re-coded to 1% of the average income equivalent and by 10 times the average household income.*

*Source: ECV – 2008, and author’s own data.*

Such personal income inequality places women at an evident disadvantage in terms of economic vulnerability. In the conventional approach this disadvantage remains largely concealed because it adds and divides in equal shares the incomes obtained by each household member; however, it tends to emerge when women are made household heads, in many cases after a separation or divorce, or the death of spouse, as can be seen above.

## 6. Inequality and position in the labor market

A key issue in the interpretation of income differences between men and women is the persistence of significant differentials both in access to the labour market and in the salaries earned therein. One of the most characteristic features of the current Spanish labour situation, in a comparative context, is the persistence of low rates of female participation which are considerably lower than in other countries (Table 10). Continuing wage differentials have also had a very important effect, hindering the implementation of equality of salaries between men and women. Thirdly, many studies have confirmed the presence of job segregation and wage discrimination; these have a determining effect on maintaining the gender gap in salaries and quality of jobs.

**Table 10**

### Employment status of men and women, 2008

Percentage

Male	Female	Total
Working		
Full-time		
Part-time		
Unemployed		
<b>Total</b>		<b>active</b>
Student		
Retired		
Unable		to work
Housework		
Other		
<b>Total Inactive</b>		

*Source: EVC – 2008, and author's own data.*

The features mentioned above exceed the actual scope of the differences in wage earnings since they can also lead to very different positions in the distribution of incomes and - above all - to problems of economic insecurity which are much more pronounced in the case of women. When the estimated wage gap for working women is linked with the income of the households to which they belong, it is revealed that a reduction of wage discrimination would cause a significant decrease in levels of relative inequality and poverty. Although the three features listed above have improved over time, the extent of the differences and the connection between the gender wage gap and household welfare inevitably demand that we look to the labour market for some of the key explanations for the high levels of economic insecurity for women.

The first relevant question is how women and men access the labor market, given the possibility of processes of occupational segregation. One of the main features of the socio-labor profiles of men and women is the different educational/training profiles for each group. Traditionally the Spanish labour market has been characterised by low training levels, more pronounced in the case of women than in men. The current data of *ECV* reveals that these differences, on average, have been reduced, although the higher percentage of male university graduates is maintained (Table 11).

**Table 11**

**Level of education completed by the adult population (16+), 2008**

% education		
Male	Female	Total
No		
Primary		
<b>Total primary or lower</b>		
Lower		
Higher		
<b>Total secondary</b>		

Training and job placement requiring higher secondary education

Tertiary		education
<b>Total</b>	<b>higher</b>	<b>education</b>
No answer		
<b>TOTAL</b>		

*Source: ECV- 2008, and author' own data*

However, this aggregated data hides the progressive equalization of educational levels that can be observed when an analysis is made by age ranges (Graph 4). The *ECV* data clearly show that a change has been taking place in average educational levels with a clear increase in higher and secondary education and a corresponding reduction in the relative weight of lower levels of education, and also that there has been a substantial improvement in the training levels of women. Unlike women over 45, who on average have inferior training compared to men, women under this age have a higher educational formation than their male counter-parts.

#### **Graph 4**

#### **Distribution of the adult population by sex and age, according to the level of completed education, 2008**

Tertiary	Secondary	Primary or lower
%		
Age < 45	Age 45-64	Age > 65

*Source: ECV – 2008, and author's own data*

The immediate consequence of this is that women are entering the labour market with a better education, on average, than men. If other things are equal, and with all the limitations imposed by the difficulty of comparing university degrees or human capital, one would expect that - if not higher productivity and larger salaries - at least initial salaries would be no lower than those of men.

However, several indicators reveal that this improvement in female educational levels has not been fully translated into better results in activity,

employment, and salaries. Figure 5 shows that activity and employment rates remain comparatively low in the under 45 year-old group of women. Whereas nearly three in four men in this age range work full-time, only one in two women do. Above all, although much higher than women of previous generations work activity is still low, with almost 30% of women outside the labor market contrasting with 15% of men.

## **Graph 5**

### **Current employment situation of young men and women (16-45)**

Women	Men
%	
Working full-time	
Working part-time	
Unemployed	
Inactive	

*Source: ECV – 2008, and author's own data*

In all countries where there are important differences between men and women in gaining access to employment, even where there is a smaller difference than that observed in Spain, there are often also occupational segregation processes that determine a lower educational performance and smaller salaries for women. Although an analysis of various forms of segregation would require a more detailed study of the indicators and the incorporation of the more precise measurements identified by the rapidly expanding academic literature, there are some very simple indirect indicators which signal the persistence of very important distinctions in the

work characteristics of women, and which allow the salary differentials to continue.

The first indicator is the number of hours worked per week. While workers' preferences may be diverse, and working a reduced week might be considered ideal for some people, a reduction in working hours takes on a different interpretation if it is not a voluntary decision. The data provided by *ECV* are certainly illustrative (Table 12). Women work about 15% fewer hours than men. Of course, this result hides a notable heterogeneity in the jobs performed and a possible composition-effect by which the concentration of women in certain positions reduces the number of working hours.

**Table 12**

**Features of women's work**

Percentage

Male	Female	Total
------	--------	-------

**No. of actual hours worked per week by occupation**

**Reasons for working less than 30 hours per week**

Studies/training

Illness or invalidity

Failure to find work for more hours

Does not want to work more hours

No. of hours worked is considered full-time

Works at home, caring for children or other dependents

0.3 million

1.4 million

1.8 million

**Supervision of other workers**

Yes

No

**Type of job contract**

Long-term

Short-term

### **Change of job over the last year**

Yes

No

### **Reasons for job change**

Found a better or more convenient job

Termination of contract, temporary job

Care of children or other dependents

Marriage or moving to another area due to partner's work

Other reasons

*Source: ECV – 2008, and author's own data*

However, this result must be qualified by taking into account personal preferences and whether the decision about working hours, as presumed by a standard model of the labour market, are partially imposed or taken completely free from pressure. The available data on this issue clearly indicates that the constraints on women who work fewer hours (less than 30 per week) are very different from those on men. 40% of women compared to 3% of men report that the fewer number of hours worked is conditioned by the need to meet family responsibilities. Only 8% - a very similar percentage to that of men - reply that the number of hours worked corresponds to their personal objectives and the desire to work a shorter day.

A second aspect that allows us to measure the differences in the quality of jobs is the degree of responsibility achieved. According to the *ECV*, only 13% of women - less than half that of men - perform tasks involving organizational responsibility over other workers. No wonder, therefore, in this context, that in another of the key indicators for interpreting the Spanish labour reality – the type of contract – the experience of women is especially disadvantageous: four out of ten women are employed on fixed-term

contracts. The difference in the reasons given to explain job mobility is yet another indirect indicator of the position of women in the labour market. Although on average women change jobs more often than men, their reasons for it are more likely to be conditioned by family than by the desire to get a better or more appropriate job. The higher incidence of temporary work obviously provides some explanation for this situation, but a job is often given up in order to care for children or other dependent members of the family – the percentages are triple those of men - and to accommodate the job demands of their husbands.

## **Graph 6**

### **Type of current or last job**

Women	Men
%	
Unqualified	
Production line/ machine operator	
Trained industrial/building/mining	
Trained agricultural/fishing	
Catering and personal services	
Administrative	
Technical and professional assistance	
Scientific/intellectual technician or professional	
Managerial and directive	
Armed forces	

*Source: ECV – 2008, and author's own data*

The synthesis of this battery of indirect indicators is the subordinate position of women in the workplace. Their job situation is more precarious, their choices are fewer, their organizational responsibilities are more limited, and the restrictions on promotion and job mobility are very much more severe

than those on men. Such characteristics inevitably lead to a predominance of low-skilled occupations. According to *ECV* data, almost half of working women are employed in the broadest category of unskilled jobs, or in the hotel and catering or services industry (Graph 6). This percentage is reduced to a quarter in the case of men. Such differences, although somewhat smaller, are also present in the lowest age range which should lead us to expect that for the foreseeable future this differential will persist.

## **Graph 7**

### **Gender composition of the deciles of gross salaries, 2008**

Women            Men  
%

*Source: ECV – 2008, and author's own data*

The range of the pay differential can be clearly observed by looking at the different position of men and women in wage distribution. The occupational inequalities described are faithfully reflected in the over-representation of women in the lowest deciles (two thirds of the workers at the lowest 20% of the wage distribution are women), and their limited presence in the strata of higher wages (less than 30% in the top decile). Such differences have remained constant in recent years and do not change substantially when distribution is analysed in terms of net rather than gross wages. Such an analysis would show that almost one third of women are currently employed in occupations characterised by low wages.

## **Table 13**

### **Indicators of basic salaries, by gender and age, 2008**

#### **Current gross monthly salary**

Total                            M                            F                            M/F

#### **All ages**

## **Average salary**

Percentiles

## **Age 16-44**

### **Average salary**

Percentiles

## **45-64**

### **Average salary**

Percentiles

Note: P10, P25, P50, P75, P90 = salary received by workers located in the corresponding percentile of the distribution.

*Source: ECV 2008 and author's own data*

These wage differences - fundamentally determinant, although not exclusively so, of the income inequalities between men and women – can be observed in people both over and under 45, albeit to varying degrees (Table 13). The average wage gap remains high: about 25% less than the average gross salary, with a strong resistance to improvement. The gap, however, gets less as we move up the pay scale: from a rate close to 60% in the lowest percentile of wages to differences of roughly 15% at the higher end of salaries. It should be noted as a possible indication of future development that the range of variation of the salary differentials by percentiles is less for the younger generations, and so too are the salary differentials of each percentile. Improving the educational level of women entering the labor market, together with other changes, should lead to an eventual and gradual reduction in wage differentials. Greater equality in the different social spaces that interact with the decisions that women make about work, particularly in the sphere of domestic and family responsibilities, is necessary in order for real equal work opportunities to exist.

## 7. Conclusions

1. A review of the general indicators of inequality and poverty in Spain shows that during the period studied (2004-2008) there has been some limited change, although there are still high levels of inequality (*Gini* index indicates more than 0.30) and relative poverty (over 19% of the population) when compared with the figures of other EU members

2. Although the period studied is short, and it is important to be wary of predicting potential trends, the data seem to show a slight decrease in the risk of severe poverty over the last two years, which is, nevertheless, compatible with a small increase in inequality over the whole period. The distance indicators also show signs of a relative decline in the differentials at the lower levels of the distribution and a small increase at the upper level (D90/D50). Poverty rates based on direct indicators of living standards signal a marked improvement between 2004 and 2008 although the most recent data demonstrate some symptoms of the negative effects of the economic crisis (with an increase in the number of households with severe difficulties in making ends meet and delays in rent or mortgage payments).

3. The purpose of this chapter is to study the situation of women in the context of income distribution and poverty. As a first approximation, the indicators of inequality and poverty obtained from the *ECV* data, using the conventional methodology which entails combining revenues and income for household members, do not show any notable differences between women and men. The results are only mildly unfavorable for women, both in terms of inequality and in terms of relative poverty. However, the situation changes somewhat if we focus our attention on households headed by women (i.e. the main breadwinner, contributing the greatest amount of resources for household expenses). The breakdown of breadwinners by gender shows marked differences, which tend to increase sharply after the age of retirement. We must stress the fact that only three out of ten households are supported by women, who are often widowed, separated or divorced. This is a striking result which, in itself, demonstrates the

persistence of significant income and labor inequalities, despite the advances that have taken place in the field of formal equality, other social indicators, and in the general recognition of the role of women in society.

4. *ECV* data show that female heads of households have a slightly higher risk of poverty than male ones, particularly moderate poverty risk for women over 65 and especially extreme poverty risk for women under 45. This unfavorable situation of households headed by women is confirmed by using alternative methods of measuring poverty: both those which included imputed housing rent in the definition of income (it should be noted that in recent years *Eurostat* has encouraged the incorporation of this data into its distribution studies in order to improve estimates of poverty and inequality), and those which include direct indicators of living standards.

5. However, the conventional approach applied in the previous analysis ignores the different economic role of men and women within the family unit which can have major implications in terms of economic vulnerability. We also analysed, therefore, the gender inequalities in the distribution of *personal* income which takes into account the individual income received mainly through wages and pensions by different household members. The data contained in the *ECV* of 2008 shows that nearly 30% of adult women do not have any income from salaries, self-employment or social benefits, compared to only 8.5% of males. This constitutes the first and most important asymmetry. Additionally, those women who do receive their own personal income on average obtain a lower amount than men both in the case of wages and pensions, and in the case of other social benefits. According to data from *ECV*, the total sum of female personal income amounts to 10,886€ net p.a.: only 72% of that of men. So the data confirms the existence of a clear disadvantage for women in terms of personal income which is usually hidden in the conventional approach but tends to emerge when women are heads of household, often as a result of separation process or divorce.

6. The analysis of employment confirms the unfavourable work situation for women despite a progressive equalization of educational levels which for women under 45 has even reversed the gender gap in this field. It should also be noted that although the entry of women in the labour market has been massive over the past years, the female activity rate remains significantly lower than that of men; the number of women enjoying retirement benefits is also lower but, conversely, the number of female workers who have temporary or part-time contracts is much higher than that of men.

7. In general, the data indicates that women have been incorporated into the labour market in subordinate and less advantageous positions than men. The number of female employers is lower than that of male employers and the same applies in the case of self-employed workers. Female 'specialisation' in terms of jobs is still concentrated in the least valued and lowest paid activities of our societies: unskilled work, catering and personal services, and administrative jobs. Despite the progress made over recent years there is still a long road to travel.

8. Finally, the remuneration women receive is significantly lower than that of men. Female salaries are only 75% of male salaries. This is further evidence of the level of discrimination that has been so often highlighted by previous studies. Policies are still needed, therefore, to correct these differences, including measures which address other social spheres beyond the workplace where various forms of economic inequality between men and women are reproduced.

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# 10

## REGIONAL MEDIA: A SIGNIFICANT DEMOCRATIC DEFICIT

### 1. Introduction: regional media and integrated development

The means of communication has two facets which are unavoidably and increasingly inter-related: a pluralist function incorporating ideological and, ultimately, political and electoral diversity; and an increasing ability to contribute to economic growth and employment, branding the media as a basic element of the 'new economy' of intangible cultural services centred round information and communication.

In both respects, it has been observed that television for the regions, and by extension mass communication, can and should play an essential role as "the key sector in the articulation between culture and industry" (Moragas, Garitonaindia, 1995) acting as a locomotive for all the cultural activities of a particular area, and as the coordinator of joint efforts between the public and private sectors, providing "the middle way between the necessary economic realism and democratic cultural demands" (Musso, 1991).

The dependence between the two facets is often ignored or undervalued by the traditional reflexes of the drastic separation between politics and economics. But the territory is far from being simply a physical space, and even less a completely finished construct: it is, above all, a relationship between people, a space of appropriation and identification; in the final analysis, it is a permanent social construct. This means that communication has been and always will be "at the heart of the composition of the territorial edifice" - and therefore of the regions - because of its on-going contribution to the building of democracy and prosperity (Lefebvre, Tremblay, 1998).

This central idea led the Council of Europe to sponsor studies to distinguish between two types of local-regional communication: the media as mirror (arising out of and rooted in a region), and the media as window (market antennas for large national and multinational companies). This typology recognises the decline of the double axis: public-private and national-local, and has an important repercussion on democracy and regional development (Musso, Sou  tre, Levasseur, 1995) because the locally-owned ‘media as mirror’ tend to be grounded in the aspirations and needs of a specific geographic location, maintaining programming linked to local identity; while the ‘media as window’ - normally nationally or internationally owned and with a commensurate strategy – tend simply to be looking for local markets, with higher or lower doses of local interest, but essentially employing more general-interest programming.

Such a framework allows us to examine the conflictive relationship between the de-centralised administrative authorities in Spain and the power of the communications industry. Spanish de-centralisation, firmly established at the political and economic level, has thus far lacked a corresponding rootedness in the communications industry. This is primarily because the Spanish media structure has travelled in the opposite direction: towards an increasingly centralised, global rather than local structure; and secondly, because the hard-won democratic advances regarding transparency, objectivity and separation of the media at the state-level have hardly yet extended to the autonomous regions and are, incidentally, still unstable and precarious. It must be noted that the role played by the regional/local in the cultural and media sector does not necessarily lend itself to such beatitudes as “small is beautiful”. Moreover, after examining the data in this chapter, we can conclude that the Autonomous Communities (CCAAAs) remain at a stage of communication that has not yet achieved, in general terms, either independence from the public media, or autonomy from the private. This situation is still more disturbing when it is realised that the regions furthest from Madrid enjoy a greater liberty than those closer to the capital, which are often almost suffocated by their proximity.

Together with a description of the structure of the major mass media in Spain, there are various 'black holes' which allow us to examine the regional communications industry via a transversal review of the problems of public and private media. Several of these problems are already classic and endemic, such as the injection of state funds into private media companies – especially those of the press (grants, advertising, subscriptions ...) - and the control *versus* emancipation of public media, and the gratuitous distribution of radio licences. But there is a growing strength in a new and expanding area of power: the distribution of private concessions for local and regional digital television. The decisions taken now regarding these licences will probably determine the media structure and public space in the regions for many years to come.

## **2. Spain: a centralised media structure**

The general structure of the media and its regional references need to be explained in order to avoid a mistaken idea of conformity. We must examine their varying degrees of diffusion bearing in mind that the influence of television (88.5% of the Spanish population) and to a much lesser extent, radio (55.2%), is far wider than that of the press (40.7%), although the distribution and audience of the latter is dramatically greater in the north than in the centre and south of the country.

In any event, and more important than these differences, the three main classic mass media in Spain have adopted a structure that is consistent with the de-centralised State of the autonomies. Whether because of economies of scale which are inherent in the economy of information and communication or frequently because of the pro-merger policies of the central State and the regional governments themselves, the overall framework of the private media groups is predominantly centralised. This leaves little room for regional or municipal manoeuvre either in terms of audiences, or above all in terms of financial resources. Consequently, the Spanish case has little in common with international de-centralised models

such as those of the French press, or those of radio, television and the written press in the USA.

With regard to the daily press in Spain, the 140 newspapers published in 2008 may appear to give an image of diversity, limited only by the low penetration of their distribution (4.03 million copies). In the sales rankings only three regional newspapers appear in the list of the top ten, selling more than 100,000 copies daily (*La Vanguardia*, *El Periódico de Catalunya*, and *El Correo*). And there are only three others with a daily sales rate of 50,000 copies which could in theory be called local newspapers (*El Diario Vasco*, *La Nueva España*, and *Diario de Navarra*).

The traditional division between the distribution of national newspapers and the rest can also be misleading: the total number of national newspaper sales only amounts to 1.36 million copies compared to the 1.73 million of local newspaper sales. However, any enthusiasm that might be aroused by this fact is dampened when it is revealed on analysis that 10 press groups accumulate 84.9% of total sales, and the first five of them accumulate 69.1%. Furthermore, an examination of these media groups demonstrates that either their origins and their market are national (*El País*, *El Mundo* and *ABC*), or that their roots lie in the richest and most populated regions (such as *Vocente*, *Godó*, *Prensa Ibérica* and *Zeta*) and so in terms of strategy and reach they have become national groups. Meanwhile, the strictly local or regional press groups have only a very modest presence in the national market, such as *Joly* (Andalusia) and the *Corporación Voz*, with little more than 2% each of the total (AEDE, 2009).

An analysis of the main newspapers in each region also uncovers a great variation between a strong dependency on the national media - as in Andalusia, Castille Leon and Castille La Mancha - and regions where the local media plays more of a role, such as Catalonia, Galicia and the Basque Country. But in many cases, the leading newspapers in most of these areas are part of a national group (*Godó*, *Vocente*, *Prensa Ibérica*) and only very rarely part of a local one.

An examination of radio shows that the total broadcasting licences issued in Spain is very high in relation to the population, with a total of 2,897 stations. However, 954 are owned by, or affiliated to, national channels, with only 117 belonging to regional broadcasting companies. And while the 1,826 local radio stations may give an image of decentralisation (*Asociación de la Prensa*, 2009), nevertheless, the essential structure of the Spanish audience in popular radio is very largely controlled by three private, nation-wide, groups (*SER*, *COPE* and *Onda Cero*), which taken together had 9.25 million listeners (with *Punto Radio*) in mid-2009; and when the audience of RNE (*Radio Nacional de España*) is factored in the audience figure reaches 10.43 million (*AIMC*, Mayo 2009). As a result, the regional channels only occupy the lower ranks of listening figures, as in the case of *Catalunya Radio* (6<sup>th</sup> with 361,000 listeners), *Radio Cadena Sur* (8<sup>th</sup> with 361,000 listeners), *Radio Euskadi* (9<sup>th</sup> with 123,000), *Radio Gallega* (123,000) and *Euskadi Irratia* (75,000); and the five most powerful regional radio stations audiences added together barely reach 11.26% of the total audience (*AIMC*, 2009, October 2008 - May 2009). The situation in terms of specialised radio stations is much worse given that regional stations appear at the bottom of the ratings when listed with the large national channels. In conclusion, the audience share of the six most powerful regional channels is 12.8% of the total radio audience (*AIMC*, 2009).

In 2008, the radio sector's total commercial income amounted to 641,090m€ (*Infoadex*, 2008), of which 605,030m€ was accounted for by four radio stations (*SER*, *COPE*, *Onda Cero* and *Punto Radio*). This implies that the percentage of income from advertising for other public and private stations was very low (*Noticias de la Comunicación* n° 295, October 2009). Although neither of these sources nor the *Comisión del Mercado de las Telecomunicaciones* (*CMT*) provide figures for the commercial income of public, regional radio stations, it is simple to deduce that they are insignificant when compared to the estimated 176,800m€ of State aid (*CMT*, 2008).

The figures are more positive in relation to television: the estimated average audience for the public regional channels reached 14.4% in 2008. However, as often occurs with such tertiary channels, their share of advertising sales was much lower: amounting to only 319.6m€ and representing 10.6% of total TV advertising sales (2,988.1m€) (*UTECA*, 2009).

With a 2.2% share of advertising sales in 2008, local television scarcely managed to collect 37.9m€, representing a drop of 25.5% from the previous year when they received 50.9 million euro. The implication of these figures is that one segment of the market has been more penalised than others by the economic crisis (*Infoadex*, 2009).

### **3. The press: subsidies and unregulated advertising**

Press subsidies have a decades-long tradition in Europe as a result of the idea that financial aid encourages pluralism and discourages monopoly, and that it promotes editorial diversity. However, there are more than a few cases where such aid, especially in the form of direct subsidies, has been suspected of being influenced by political patronage on the part of governments and ruling parties, particularly when it has been primarily directed to promoting the success of the largest groups and thus favouring monopolistic trends.

The latter two charges were the focus of debate during the transition to democracy, especially during the Government of the *Unión de Centro Democrático (UCD)* when direct aid to the paper industry, to broadcasting, and to technological innovation, achieved a certain economic importance. As a consequence of the demand for transparency and diversity, the socialist Government of Felipe Gonzalez legally regulated this type of aid (*Ley 29/1984*); shortly afterwards, in 1988, direct aid to the press was effectively abolished (*Ley 37/1988, de Presupuestos Generales del Estado*) in line with European Community regulations prohibiting anti-competition subsidies to the printed press.

Subsidies to the press, however, have been revived since then by the Autonomous Communities and have been on the increase, justified by diverse arguments ranging from the promotion of information in autochthonous languages to the dissemination of news of public interest, from encouraging the reading of newspapers to the dissemination of cultural information. The truth of the matter is that in most autonomous regions subventions and subsidies to the written press, and to a lesser extent to other means of communication (radio, television, web-pages), have existed for years, sometimes involving significant amounts of money. The curiosity of the situation is that in the regional sphere the democratic demands of the transition – transparency, objectivity, the advocacy of pluralism – have generally been forgotten or only maintained by marginal groups such as the trade unions or intellectuals which lack the capacity to change the situation.

These policies have provoked a lot of scandals in various regions. Perhaps the most notorious have been the recent cases of Manuel Fraga Iribarne in Galicia and Jordi Pujol in Catalonia where their prolonged mandates gave rise to intense suspicions of cronyism, manipulation of the media in order to further party interests, and criticism of their desire to hang-on to power.

The case of Galicia was truly spectacular: the reports of the *Consello de Contas* (Accounts Committee) to Parliament in 2007 repeatedly stated that normal practice over the previous 16 years had included, “administrative malpractice and irregularities, the absence of clear criteria in the selection of petitions, and unclear government agreements with particular media with no follow-up control mechanisms”.

During the 2004 election campaign the Galician parties opposing the PP committed themselves to the introduction of an objective form of regulating press subsidies; but this proposed bill was postponed until the following legislature; the promise was renewed in the next electoral campaign by both Emilio Pérez Touriño, president of the Galician *Xunta* (parliament), and Antxo Quintana, the vice-president. In 2009, having lost the elections, and after the new PP president, Alberto Núñez Feijoo, had once again promised

to regulate the subsidies “in order to maintain a free and plural system”, the parties then in opposition and the Galician journalists’ trade union criticised the *Xunta*’s attempt to dominate the press, observing that two groups, *La Voz* and *El Faro* had received 55% of the new public subsidies.

No less shocking was the case of Catalonia, where after years of undocumented accusations, some journalistic leaks in 2004 (Valls, Garriga, 2004) indicated that in 2003 discretionary aid from the Presidency of the *Generalitat* (when Artur Mas was chief councillor) had risen to 18.23m€, of which 71.72% (12.99m€) had benefitted the newspapers of five media groups: above all, *La Vanguardia* (7.8m€), followed by *Avui*, *El Punt*, and *El Periódico de Cataluña*.

The figures acquired greater precision when, after a request from the parliament, the government sent a report disclosing that aid to the media between 1995 and 2004 amounted to 90m€ (Department of Communication, 2004). In this document it was revealed that annual subsidies had been on the increase since 1999, reaching their maximum during the 2000/2003 legislature when they totalled almost 25m€; they had subsequently fallen in 2004 to 16.64m€. In addition, the department of the presidency, which shared the responsibility for these sum with the department of culture, had - discreetly and sometimes without any public convocation – benefitted *Primera Plana* (Zeta), *Prensa Catalana* (Avui) and *El Punt* most notably in 2003 (the year of elections, when they reached their climax). The department of culture had preferred in this instance to endow its favours on Avui and *El 9 Sportiu de Catalunya*.

However, the controversy aroused by this information and the subsequent criticism directed towards the Catalan nationalist party, *Convergència i Unió*, were obscured by yet another scandal caused by the leaking of the “*Informe sobre mitjans de comunicació social*” (Media Report) to the Parliament. In it the Catalan media was anonymously classified according to their proximity to the tripartite government, causing the resignation of the general secretary of communication, Miquel Sellarés, in May 2004. Nonetheless, as an

academic study concluded, this political crisis did not allay the seriousness of the fact that, “it has been demonstrated that press subsidies conceded by the government of the *CiU* during the previous legislature (...) were characterised by their sheer volume and, in the case of the adjudications by the department of the presidency, by their absolute lack of transparency and methodology” (Fernández, Blasco, 2008).

The electoral promises of the PSC and ERC in those years, revalidated on this occasion by the chief councillor, Josep Bargalló, focused on regulating and ensuring the absolute transparency and objectivity of aid to the press, with the clear aim of supporting the Catalan press and encouraging the social and territorial cohesion of Catalonia. In effect, media subsidies, along with the media department, were transferred to the department of culture; but no regulations were put in place to guarantee the objectivity of its media subsidies.

Consequently, in the following years, criticism of government aid to the press continued. A novel development involved the polemic arising from the attacks on each other by the Catalan media. For example, *El Diari de Girona* repeatedly attacked *El Punt* for the favouritism shown to them on the issue of subsidies and the obscurantism of the government in refraining to make public aid to the media conceded in 2007. There were also criticisms that the ‘nationalist press’ was being rewarded and that the *Generalitat* had distributed more than 17m€ to them in 2007 compared to the 10.9m€ in 2006. In both periods, as in 2005, the groups that gained most benefit were *Ediciones Primera Plana (El Periodico de Catalunya)*, followed by *Grupo Godo*, *El Temps (Edicions del País Valencià)* and *Avui*, as well as *El Punt* - almost without exception, the same media groups as had benefitted during the legislature of the *CiU* (See: Table 1).

## **Table 1**

### **Media aid allocated by the *Generalitat* of Catalonia: 2007-2008**

Structural aid to the printed press

Structural aid to the digital press

Structural aid to radio stations

Structural aid to TV stations

**Sub-total of structural aid**

Aid to printed press projects

Aid to digital press projects

Aid to radio projects

Aid to TV projects

Aid to non-profit associations

**Sub-total of aid to projects**

**Total**

\*(Editor: ¿Donde esta?) Aid to press and commercialisation assigned by the ICIC

NB Figures only included subsidies over 3,000€

*Source: Authors own, taken from the data of the Area de Edición y Prensa de les Instituto Catalán de Industriias Culturales (personal communication: April 2008): DOGC (14.3.2008), and the Secretaria de Medios de Comunicación (personal communication, February 2009).*

Although the cases of Galicia and Catalonia achieved greater national notoriety, for over a decade the controversy was widespread throughout the regional autonomies. Thus, in Murcia the government of Ramón Valcárcel had distributed 600,000€ in subsidies over three years (2005-2008) from the council of education to specific media outlets: *El Faro de Murcia*, *La Opinión*, *La Verdad* and *La Razón* (50,000€ annually to each one) despite the poor sales in Murcia of the latter, all of which were justified by such vague arguments as “spreading the news about the world of education via the local press” or by a law supposedly allowing (7/2005 of November 18<sup>th</sup>) general subsidies to private enterprises.

In a recent study it was discovered that nine of the seventeen regions had regulatory systems governing press subsidies, and that between them all (with the exceptions of part of the Canary Islands and Catalonia) they had a large amount of disposable funds for mainly selective subsidies and a wide margin of discretion in terms of their allocation (see Table 2).

**Table 2**

**Press subsidies detected in the regional authorities (2007)**

**Million of euro**

Andalusia

Asturias

Balearic Islands

Region of Valencia

Catalonia

Galicia

Basque Country

Navarre

**Total of 8 regional authorities**

*Source: J.Blasco, 2008, taken from a non-exhaustive study of the official bulletins of the regional authorities.*

The other parallel source of political and media controversy, incessant for many decades but especially present in recent years, has been institutional advertising. In theory it is regulated by a State law passed during the Government of Rodriguez Zapatero, although it is only indicative at the regional and municipal level. A team of researchers concluded in a study that “although it has a large-scale budget, it is not subject to any control” (Fernández, Moragas, 2008). Virtually no region

or governing party has been spared the charge of generating an enormous volume of institutional publicity, and this controversy has two aspects: on one hand, the suspicion of governmental abuse in the field of propaganda and self-promotion; and on the other hand, the capacity of governments to gain – via this spending – the power to control and orientate the direction of the media, or to punish media who take an opposing position to their own.

In recent years newspapers have reported the heated debates that have taken place over this issue, such as those in the Madrid region where the socialist opposition accused the PP government of increasing spending in this area from 39m€ to 138m€ between 2003 and 2006. According to press reports based on figures drawn from official budget figures, the government of Esperanza Aguirre would have spent some 160m€ in 2007 – a regional election year – amounting to more than half that spent by central Government (268m€). The sum was spent on two specific items: “economic, cultural and educational promotion” (100.5m€) and “advertising and publicity” (61.47m€) (*El País* 17.03.2008) for campaigns whose main slogan was “The sum of it all”, considered by many as overly self-congratulatory. Similar accusations and debates arose in the Basque Country at the end of the Ibarretxe period of government; in Andalusia just before the most recent elections; and almost permanently in the Valencia region during the mandates of Camps.

In Catalonia, the institutional advertising of the *Generalitat* in the daily press had risen to 4.73m€ in 2003 and to 3.04m€ in 2004 (the last years of the Pujol era); the media groups gaining the greatest benefit from this were, firstly, the *Godó* Group, followed in consecutive order by *Zeta*, *Avui*, and *El País*. Some media reports claimed that the total spending in this category in 2003 amounted to 11.3m€, making Catalonia the second highest institutional advertiser in Spain (*Anuncios*, July 2004). However, the demand for strict regulations in this field fell on deaf ears, including those called for by the Audiovisual Council of Catalonia (CAC) which up until October 2007 was responsible for monitoring and approving these

campaigns in addition to those of municipal authorities. According to some newspapers, the department of Montilla had increased its advertising budget in 2008 and put it up to 31.6m€ in 2009 (*El Mundo* 06.05.2009). This disclosure attracted criticism from the *CiU*, although they had to admit that in 2003 they themselves had spent some 39m€ on advertising and publicity.

A similar situation occurred in Galicia where, after years spent criticising the government of Fraga, Pérez Touriño and his bi-party government also committed themselves to bring in a law regulating institutional publicity in order to put a stop to its use “for propaganda purposes”; although in the end the project was not introduced during that legislature. Now back in opposition, the *PSG* and the *BNG* have reiterated their criticism of the PP government of Feijoo over this issue, urging him once again to regulate government spending on publicity.

Finally, and without being able to discover the exact figures of the sums of money dedicated to institutional publicity by regional governments, we at least know the assessments made available by *Infoadex* in their annual reports on the sums spent by the larger advertisers of “public interest” -which probably minimise the total amount devoted to this concept (see: Table 3) - and which focus on scrutinising the larger media groups and campaigns.

In any case, an examination of these estimates shows that in 2008 Catalonia and the Region of Madrid were among the largest institutional advertisers (positions 3 and 6 respectively) where they rub shoulders with the big central Government departments. Beyond the specific numbers and regional rankings, it can be concluded that in 2007 these advertising investments accounted for a total of 60.69m€ spread out over 16 autonomous regions, with the curiosity that in the midst of the economic and fiscal crisis of 2008 the regions have reduced their spending to a much lesser extent than the Spanish Government (12.3%

less, compared with 21.6%), maintaining it at a massive 50.19m€ (see: Table 2). It is clear that some town halls do not lag behind the regional big-spenders: Madrid town hall spent 5.23m € in 2008 and 9.05m€ in 2007.

**Table 3**

**Regional governments: estimated spending on institutional publicity 2007-2008**

(In million of euro)

Ranking	2008	2007	Variation in %
Catalonia			
Madrid			
Andalusia			
Galicia			
Basque Country			
Castille la Mancha			
Valencia Region			
Castille & Leon			
Canary Islands			
Asturias			
Murcia			
Balearic Islands			
Extremadura			
Aragon			
Navarre			
Cantabria			
<b>Total: regions</b>			
<b>Total: Spain</b>			

*Source: Infoadex 2008*

#### **4. Regional Radio-television (RTV): between positive decentralisation and permanent suspicion**

The model of Spanish regional broadcasting, unusual in Europe, can only be understood within the context of its origins – the early eighties – when the stubbornness of *RTVE* and pressure from nationalist parties combined to bring into existence independent bodies in each regional authority with no shared resources or national-wide broadcasts (as in the German federal model), and a rejection of proposals designed to convert the second channel into a decentralised one. First to appear was *ETB* (January 1980-February 1983), followed by *TV3* (May 1984), and later *TVG* (May 1985); the process was extended in 1989 with *Canal Sur* in Andalusia in February, *Canal Nou* (Valencia region) in April, and *Televisión Madrid* in May.

The crux of the biggest problems of this singular model, which have been present since its inception, comes precisely from being a regional replica of *RTVE* and reproducing all its faults: from public corporations which obscurely practise cross-accounting between radio and television, to the political appointment of general managers; management boards with few responsibilities and elected by political party quotas; and a financial model characterised by the unlikely aim to become 'self-financing' via advertising which usually means increasing commercialisation, leading to indebtedness and financial instability, but with little to do with the provision of a public service.

The result of this economic and management model has been that for almost 25 years – as has occurred with *RTVE* – there has been an on-going suspicion of cronyism and government manipulation, as well as financial and management instability. All of this has reinforced an extreme *governmentalisation* that has determined a proliferation of appointments of people who are known to be loyal militants - very often press officers or fellow council members of the regional presidents - to senior management positions.

In financial terms it should be mentioned that in 2003, the tertiary channels taken together had an operating income amounting to 1,111.1m€, but the 430m€ annual deficit was covered mainly from State coffers: from the 52% of TV3 in Catalonia to the 72% of TV Galicia and the 90% of the TV in Castille La Mancha. In addition, several regional imbalances between revenue and expenditure were resolved by loans guaranteed by the State, amounting to an estimated total of 1,595m€ (Bustamante, 2006). Of course, these regional bodies have very diverse budgetary aims: in the cases of Catalonia and Andalusia (with estimates exceeding 250m€) the regional channels have ambitions to be competitive; while in regions such as Madrid, Euskadi and Galicia (with expenditure in the region of 150m€) their goal is to be complementary; and the most recent tertiary, minority-orientated channels (with between 14m€ to 75m€ budgets) have yet other budgetary criteria (See: Table 4).

**Table 4**

**Economy of regional TV stations, 2008**

In million of euro

Company

Commercial revenue

Subsidies

Budgetary expenditure

Debt

Employees\*

Catalonia

Valencia

Andalusia

Madrid

Basque Country

Galicia  
Balearic Islands  
Castille La Mancha  
Canary Islands  
Asturias  
Aragon  
Extremadura  
Murcia  
**Totals**

*(\*) Job totals according to UGT figures, 2008 (it is understood that in the new channels both direct and indirect employment is included).*

*Source: Estimates from Corporación Multimedia.*

In 2008, the *Infoadex* data (which keeps account of gross investment, minus the intermediary costs) demonstrated that the advertising of the regional TV stations had declined during the economic crisis to a gross figure of 319.6m€, representing 10.6% of the total commercial investment in this medium, although with very significant differences across the regions. This was an entirely insufficient amount to cover even half the overall costs of the third (regional) channels.

Certainly, these facts should be counter-balanced with the virtues of the regional TV stations that have managed to capture a relevant proportion of the potential audience, competing with their private-owned rivals to maintain a stable 15% audience share over a long period; and, most importantly, have provided a boost to the audio-visual industry and by extension to the cultural industry in general. In addition, they have generated a significant number of jobs (some 10,000 direct jobs - permanent and temporary - not to mention those for independent producers and sub-contractors): indeed, a far greater number than those generated by the private sector. It is also undeniable that their broadcasts have given support to the autochthonous and minority languages, bestowed visibility on the decentralised

administrations, and offered a regional public forum. In some regions, their capacity to attract an audience was in itself eloquent of the strength of regional demand, with Andalusia and Catalonia in the lead with an audience share of around 17%, and above average ratings for third channels in Galicia and the Basque Country; however, Madrid and Valencia, and the Canary Islands and Castille La Mancha could barely attract 10% of the audience, and in other regions the share dropped as low as 5-7%.

Be that as it may, the demise of the classic model of the regional public channels occurred as a result of the setting-up of five new regional stations that were added to the older operators grouped together in FORTA (*Federación de Organismos Televisivos Autónomos*) and which between them established TV coverage across almost all of the country: the Canaries, Castille La Mancha, the Balearics, Aragon, Extremadura, Asturias and Murcia. Generally, these new models were low-budget, but sometimes they combined the almost total out-sourcing of their functions with a notable political subordination to the regional government, which was made even more obscure by the mediation of private companies.

This new type of public channel was introduced by *Televisión Canaria* in 1999 with an original formula of “out-sourcing” its infrastructure, production, programming and the resultant human resources. The bid for this out-sourcing was won by *Socatel* which, in turn, was partly owned by the *PRISA* group (40%) and local production and television companies. When the *Coalición Canaria* party allied with the PP to form the government there was a rapid about-turn of the out-sourcing which was then awarded to companies aligned to the PP, such as *Video Report Canarias* - where the major shareholder was *Antena 3 TV* in association with conservative Canary newspapers - which became responsible for the news broadcasts for 8 years, paying 142m€ for the privilege.

Following this innovation, the Balearic television (*IB 3*) initiated an out-sourcing of 70% of their programming, including handing-over the news broadcasts to a private company run by the ex-press officer of the regional

government; at the same time the regional president solemnly announced that the channel, with a government budget of 50-60m€ would be entirely independent. For its part, the *Televisión de Aragon* began broadcasting in April 2006 with a budget of some 50m€ and employment for 300, but with production largely out-sourced, including its news programmes. *Televisión de Murcia* went even further, beginning by awarding a 5 year contract and a government budget of 252m€ for almost all its broadcasting operation (the programming, production, advertising sales, and technical assistance) to a local construction group with no experience whatsoever in the audio-visual field. Finally, Asturias announced the setting-up of a radio and television channel with 98 jobs, a budget of 15m€, and the out-sourcing of journalists, sport, and other programmes to some 20 local businesses. The case of television in Castille La Mancha (Law 3/2000 of 26.05.2000) presents a somewhat different picture given that they stuck closer to the classic model of *FORTA*. By contrast, the only region that decided to organise its TV channels in coordination with RTVE was Extremadura, where the television station shares offices and resources with the regional headquarters of the state-owned radio-television company.

In almost all these cases there is an on-going question mark over the presumed cost-savings of out-sourcing and whether this mode of production is consistent with provision of a public service. Doubts increase when the selected out-sourcing companies are almost always ideologically linked to the regional party in power. To illustrate this point it should be noted that the names of *Mediapro* and *Globomedia* appear among the concessionaires of the televisions in Aragon, Asturias and the Balearic Islands - all under socialist rule; while contracts with building contractors and other business groups dominate in Murcia, the part of the Balearics governed by the PP, and the region of Valencia, where many of these companies are often dependent on the concessions and contracts allocated by the regional governments.

The situation of *RTV Autonómica* during the 21<sup>st</sup>. century has remained largely unchanged by the climate of reform that affected the state-owned

audio-visual sector. Excluded from the report of the Council for the Reform of 2005 and the consequent legislation on *RTVE* (2006), these regional stations were also little affected by the General Audio-visual Law adopted by Parliament in March 2010, which in Section IV addressing the public service, only called for greater precision in the definition of public service and for the separation of accounts, demanding that the autonomous regions “legally determine the financial system of the public service of audio-visual communication which falls under its competence” to make it compatible with the regulations on competition.

Only a minority of the regions have undertaken the regeneration of their public radio and television services. Of these, Catalonia’s action deserves to be highlighted. In 2007, a new law of the *Corporación Catalana de Radio y television* (BOPC 136, 08.10.2007) was approved which introduced a strong de-governmentalisation in the method of appointing its director general and its administrative board, *Consell de Govern*, (who now must be elected by two thirds of the Catalan parliament and for a term of six years); the signing of a programme contract, and the assumption of the Corporation’s debt (1,046m€). However, the subsequent appointment of its directors by the parliament caused heated debate when the report of the CAC (2008), as well as trade unions and the press, pointed out that the sharing-out of quotas amongst the political parties for the nomination of appointments to the board of directors had been made at the expense of the legal provisions regarding experience and professional qualifications.

Similarly, Andalusia enacted a new law of radio and television (BOPA 780, 14.12.2007) creating the *Agencia Pública Empresarial de la Radio y TV de Andalucía*, with 15 board members and a president elected by a three fifths majority of the regional parliament. It later approved a commercial code, introducing self-monitoring of advertising quantity and formulas (October 2009). However, the new director has been elected, without the votes of the PP, for a term of six years. In Asturias, after a legal reform, the director was elected by general consensus.

In the last few years the cases of other regional radio television stations have been more contentious and their attempts at reform have been frustrated in one way or another. In Galicia, for example, the bipartisan government repeatedly promised legislation that would de-governmentalise the functioning of TVG, but this never actually came to pass during the last legislature; with the arrival of the government of Feijoo, who had promised the *Federación de Asociaciones de Prensa de España (FAPE)* that they would not privatize TVG, the general director was elected with the opposition parties voting against him; there have also been repeated allegations of manipulation and the opposition have demanded a “*gran pacto*” to reform the public service. In the Balearic Islands, in a similar situation of a change of government, the *Consell* announced a new law for public RTV, but in 2008 the previous outsourcers for IB3 – in some cases competitors such as *SBT* and *Salom* (the businessman Farruso Sinto, owner of *Canal 4*) and the group *Serra* - had their contracts for 90% of the programming, including the news bulletins, extended.

The extreme cases of public television in Madrid and Valencia deserve a special mention because they have been the subject of incessant and fierce controversy over the last decade. In Madrid, in a context of collapsing audience figures and financial bankruptcy, the protests have been led by the television employees and their unions, citing systematic manipulation (*Fundación Sindical de Estudios, 2007; Sección Sindicañ de RTVM, 2008*), several major strikes, and complaints filed in Spanish courts as well as the European Parliament against the manipulation of information (2006). The celebration of Telemadrid’s 10<sup>th</sup> anniversary, in May 2009, was commemorated by a 24-hour strike which reduced its programming to canned re-runs. In Valencia, the RTVV has been at the centre of all the accusations of long-standing manipulation and appears to be very closely linked to the latter stages of the *Gürtel* corruption case via its general director, Pedro García (ex-chief press officer of Eduardo Zaplano), up to the point of provoking his resignation and replacement by José Luis López Jaraba.

## **5. The transition to digital: a new source of political 'cronyism'**

At a state level the privatisation of FM radio has traditionally caused controversy and allegations of cronyism because of the lack of Government transparency and objectivity; this was the case during the Franco era and up until after the transition to democracy. More recently, with responsibility for this area passing to the autonomous governments, the debate has shifted to the regional level. The hand-over has been taking place gradually since 1997 and 350 licences have been awarded for private radio transmitters. "The allocation of these frequencies has sparked controversy in many regions. The main criticisms are that political interests take precedence over other more objective criteria, and that in the field of radio the large media groups sympathetic to the regional ruling parties have been consolidated" (Franquet, 2002).

This situation, already endemic in Spain, has now grown to gigantic proportions with the amplification of responsibilities for the allocation of private television channels to the regional and local level. Indeed, with the arrival of private regional television, a new phenomenon has appeared on the Spanish scene whose structure is determined by the volition of the regional governments. This source of influence has been compounded by the total reconstruction of the map of local television, also subject – at least theoretically – to the enforced transition to the digital world. In fact, the socialist Government had only slightly amended the project approved by the PP Government in the last days before the March 14<sup>th</sup> 2004 elections by eliminating the technical discriminations inflicted on some of the regions but without altering the discretionary powers allotted to them or the general philosophy of the plan. The project was based on the concept of "local demarcation" that was itself based on technical coverage - which always included various municipalities - and, consequently, handed-over the responsibility for the allocation of licences to the regional authorities. The more than one thousand stations included in the project (266 demarcations, each with four programmes) were committed to broadcasting a minimum of

four hours per day or 32 hours per week and could only broadcast continuously for 5 hours a day or 25 hours per week. Although it was recommended that experience prior to 1995 should be favourably evaluated, the television stations that were not awarded a digital licence would have to cease to broadcast after a period of 6 months. Overall the plan assumed that local television would give a push to *Televisión Digital Terrestre (TDT)*, bringing forward the switch-over to digitalisation to the beginning of 2008.

The two processes initiated by this legislation, although still on-going in many regions, had already given rise to much heated political debate. By May 2007 ([www.setsi.es](http://www.setsi.es)), only a few regions had called for public offers and taken decisions on the allocation of regional licences (Catalonia, Galicia, La Rioja, Madrid, Murcia and Navarre) despite the fact that it was clear that this was “an opportunity for the regions to re-organise and regulate this sector and, above all, to further the consolidation or development – depending on the particular situation – of a strong audio-visual industry (*Impulsa TDT*, March 2007). The lack of transparent information regarding the process at the State level cannot disguise the chaotic effect of the end result.

At this juncture it is important to highlight the role of the independent audio-visual boards which have been introduced in some regions (*ACC Catalan*, *CAA Andalusia*, and the *NENA* in Navarre) and which have played a vital role in the control of public and private media, especially given the continuing absence of an independent national board. In particular, the *Consell Audiovisual de Catalunya*, created in 2000, has had its powers extended by the 2006 reform and has published a report on private radio and television concessions. At the other extreme, the Madrid regional government removed its advisory and ineffective audiovisual council, justifying the move by citing “freedom of expression”; while many other regions retain councils with no authority (such as Galicia), or no councils at all.

Furthermore, and in the absence of independent bodies in the audio-visual field capable of objectifying these decisions, the majority of regional licences

have continued to demonstrate worrying signs of political bias, including in cases of decisions taken by provisional post-electoral governments such as occurred, for example, in Galicia with the government of Fraga (relating to *La COPE* and *La Voz de Galicia*), and in Catalonia during the final period of Pujol (four programmes relating to the *Godó* group). Thus, the regions ruled by the PP have favoured *La COPE* (Galicia, La Rioja, Valencia, Murcia), *Unedisa-El Mundo* (Balears), and *Vocento* (Murcia and Madrid), or PP-aligned local media groups (*La Verdad de Murcia*, *Las Provincias*, *Antena 3 TV* in the Canary Islands). *Vocento* and *Prisa-Localia* were two of the few national groups to be favoured by regions governed by the PSOE as well as one (Navarre) governed by the PP (Bustamante, 2008).

The panorama in terms of bids and concessions for local digital television is much more complex because of the size of the problem but nevertheless follows the same pattern. Some regions have called for simultaneous bids for regional and local indirect licences while others have called for one or the other separately, and this has led to allocation decisions being paralysed or left pending. Thus, in June 2009 in Castille and Leon, 84 licences were unassigned, 24 in Castille La Mancha, and 12 in La Rioja (*Impulsa TDT, Contenidos locales*).

With this margin of discretion, the role of municipal television has either been strengthened (Catalonia) or almost completely eliminated (Cantabria, Castille and Leon, La Rioja, Navarre, Melilla); and the obligations on the broadcasting companies after the allocation of licences can encompass an almost infinite range of regulations, or a complete lack of them. Many regions have demanded large deposits or post-payments (up to half a million euro in Madrid) which, together with an under-evaluation of the experience of local broadcasting companies which in some cases amounts to many years, has led to a complete reversal of the local television map. Local stations have received regional backing in only a few of the regions with an extensive local TV range, particularly in Catalonia and Andalusia, where non-profit making broadcasters have also been taken into account.

At the opposite extreme, competition for the Madrid licences has aroused very harsh public controversy between media groups and has resulted in court hearings. The Madrid government's resolution on the award of television licences, renewable for 10 years, without a specific limit on concentration, and with no obligation to be approved by the Audio-visual Council or the regional parliament, rejected all the pre-existing local TV stations – including some associations such as *Tele K* of Vallecas, which could count on decades of experience – and awarded licences to bidders notoriously sympathetic to the PP, amongst which were companies with absolutely no previous broadcasting experience in the TV field such as Enrique Cerezo (10 stations), *Popular TV* (*La COPE*, with 5 licences) and *Libertad Digital* of Federico Jimenez Los Santos (4). The appeal lodged by the Audio-visual Council of Madrid (whose immediate dissolution was justified by citing the argument of “freedom of expression”), based on the absence of a mandatory report, only resulted in the Madrid High Court temporarily annulling the licences due to the “procedural defect” that the regional government had not evaluated all the bids presented to it (November 2008).

Finally, according to semi-official reports, only a few licence-holders in five regions (Catalonia, Valencia, Madrid, Navarre, and Ceuta) have met the broadcasting requirements, and “more than 84% of the successful bidders have not begun digital television transmission” (CMT, 2006). Thus, as a report of *Impulsa TDT* concluded, “the lack of commitment on behalf of the licence-holders (and the administrative authorities) to begin *TDT* broadcasts has put the new model at risk”.

One of the basic conclusions to be drawn must be that this process has “radically changed the method of allocating TV licenses”, promoting and strengthening the private, commercial sector (three quarters of the available broadcasting time); penalising the public service and in particular local television associations which have been broadcasting for years and which have only managed to survive in a few regions (Corominas and others, 2007); and has mainly favoured the formation of networks for the big

Spanish media groups, and in some cases, regional business groups. Furthermore, the system will be very difficult to sustain in financial terms, even for the large, articulated, national channels. This fact has been demonstrated by the closing-down of *Localia* (November 2008), which had managed to bring together a hundred or so of their own or associated TV stations but with a physically incomplete map; or with the pulling-out of *Vocente* from *Punto TV*. As a recent report concluded: “there is no economic space for local media” (*Intermedios*, 2009).

By way of example of the type of “proximity television” that awaits us, we can cite the presentation of the new regional and local channel, *Vocento*, in December 2009 which was launched over a fragmented part of Spain (*Onda 6* in Madrid, *Las Provincias* in Valencia, *Sevilla TV* in Andalusia, and *Teledonosti*, *Alava 7* and *Bilbovision* in the Basque Country) but which was based on an agreement with the large media group, *Viacom* (Nickeloden, MTV, Paramount Comedy) to provide the majority of the programmes with coordinated advertising and brief, local news bulletins.

## **6. Conclusions**

1. A centralised media structure has been increasing at the expense of a local structure. At the same time, the absolute predominance of “media as window” over “media as mirror” (or “media proximity”), has been accentuated. Paradoxically, the predominance of nation-wide media groups does not exclude them from taking an editorial line which varies according to region and the ideology of the local governing party.
2. National multi-media groups, but also regional and local ones, have thus become accustomed to a climate in which competition and profit mainly conform to spheres of political power - and not to the market – and vary according to their dependency on subsidies and favours (advertising licences) from the regional government. This climate extends to the out-

sourcing of functions. This can be observed in the case of the audio-visual production companies for regional television where “sunflower” companies have proliferated, meaning that their ideological orientation alters according to their political allies in each particular region.

3. The absence of a Spanish anti-trust and local multi-media law has exacerbated these paradoxes: groups which are increasingly concentrated at the State-level sometimes accumulate a dominating position of media power in a city or municipality (press, radio, television), but at the same time their profitability and their status is dependent on the complacency of the regional, or even municipal government. This perverse and symbiotic relationship has been sharpened by the economic crisis.
4. The worst feature of this situation is precisely its ability to continue into an indefinite future due to the fact that radio and television licences are almost automatically renewable.
5. It is not easy to come up with positive solutions to this situation given that State legislation would be considered as an attack on regional authority and give rise to very heated campaigns opposing it. Thus, a confrontation between accepted democratic consciousness and the discretionary intervention of the State in matters of the press has not been widespread in the regions. And the snowball effect of the democratic reform of *RTVE* has been extremely limited.
6. The forging of a grand pact between the two major national parties would be a step in the right direction, but it is hardly to be expected in the present circumstances. Nor does a pact with the major nationalist parties appear likely.

7. The establishment of independent, regional audio-visual authorities, as well as the introduction of objectivity into the process of the allocation of private licences, and control over the licensees' commitments, would represent a notable advance for both the independence and quality of the public service. In the same vein, in the formation of independent bodies (unions, professional associations, companies), whose aim is to assist the media in all its forms, much could be learnt from the vast international experience.

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# 11

## The third measurement of democracy

**A twelve month fall from 6 to 5.8**

### **Another decline in the evaluation of Spanish democracy**

#### **1. Introduction**

Democratic audits, as designed by the Human Rights Centre at Essex University in the UK, attempt to assess the quality of democracy according to two basic principles: political equality, and popular control understood as the right of citizens to influence public decisions and the political process. The evaluation has been carried out by experts – mainly academics – awarding a mark between 1 and 10 for their degree of agreement with various indicators measuring different components of democracy. The 57 indicators are grouped into 5 distinct areas: a) citizenship, laws and rights; b) political representation and elections; c) governance and accountability; d) civil society and participation; and e) foreign policy.

#### **Schedule 1**

##### **Fields and areas of democratic assessment**

###### **Field**

###### **Area**

###### **A. Citizenship, laws and rights**

Citizenship

Rule of law

Civil and political rights

Economic and social rights

###### **B. Political representation**

Free and fair elections

## Democratic role of the political parties

### **C. Governability and accountability**

Controls on Government

Government action

Absence of corruption

### **D. Civil society and participation**

Media

Political participation

### **E. International**

Foreign affairs

*Source: Author's own data.*

Since 2008, the Report of Democracy in Spain, edited by the *Fundación Alternativas*, has applied this audit to Spanish democracy, awarding it a rating based on the average of all the indicators. This rating takes on a greater significance when a comparison is made with the ratings of previous years. Thus, according to the assessment of the experts, the quality of democracy in Spain has fallen almost half a point over the last two years, from 6.2 in 2008 to 5.8 in 2010. The strength of the Spanish democratic system in the face of adversity is demonstrated by the fact that the fall in its evaluation only measured two tenths of a point in a year of a very strong economic downturn. However, almost all the indicators illustrated the same downward trend. Although most of this year's fluctuations are not very significant, the area that measures the level of political corruption shows that this phenomenon has clearly inflicted damage on the quality of Spanish democracy. In the last year, in addition to the worsening economic crisis, corruption scandals took a prominent place on the political agenda, and for the first time in the history of Spanish democracy the political class has ranked among the top three problems for Spanish citizens. The Barometer of The Quality of Democracy that is produced every two years by the *Centro de Investigaciones Sociológicas (CIS)* in conjunction with the *Instituto de*

*Estudios Sociales Avanzadas – Centro Superior de Investigaciones Científicas (IESA-CSIC)* confirms that citizens mention increased corruption as the most negative change that has occurred between 2007 and 2009.

The following pages present the overall results as well as those scored by each field and area, with particular attention given to the most significant changes that have occurred over the past two years.

## **2. General results**

The assessment of the quality of Spanish democracy has fallen two tenths of a point for the second consecutive year, obtaining a rating below 6 for the first time in the last three years. The assessment of each field repeats the same pattern as the previous two years. The field that covers political and social rights continues to gain the highest score (6.6), closely followed by the field that assesses the quality of our political representation (6.5). As can be seen in the chart below, the scores of these two fields are notable for being above average for the three years in which data has been available. The field which measures the quality of civil society, assessing both public participation and the role of the media, is placed at the bottom of the ratings (4.5) and is the only field, year after year, to be awarded a fail mark. The novelty this year is that the fall in the assessment of governability has been so sharp that it scarcely obtains a pass mark (5).

### **Table 1**

#### **General evaluation of democracy**

##### **Evaluation of fields**

Citizenship, laws and rights

Political representation

Governability

Civil society

Foreign affairs

*Source: Author's own data taken from analysis undertaken for this study.*

Graph 1 shows<sup>116</sup> how the field of citizenship is awarded the highest mark with the greatest degree of consensus amongst the experts. This year the field which experienced the worst evolution in its assessment is that of governability, measuring the action and control of the Government and also the absence of corruption. In line with public opinion, more than half the experts have a negative view of the fields most dependent on the behaviour of politicians, that is to say that the score does not reach 5 and less than 25% awarded a score above the overall mean of the scale (5.8%).

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<sup>116</sup> A simple form to present the results of this study is by the use of diagrams known as box-plots. In a box-plot the central box represents three quartiles of the distribution. A variable has three quartiles. Quartile 1 is the case value that leaves 25% of the cases below, and the other 75% of the cases above the quartile. Quartile 2 (or the middle quartile) is the case value that leaves 50% below and 50% above (i.e. it divides the distribution falls into two equal parts). Finally, the third quartile is the case value that has 75% of the cases below and the remaining 25% cases above the quartile. Given that the box-plot corresponds to the three quartiles, it represents the evaluations of the middle 50% of the scores (the inter-quartile range, or the difference between quartile 3 and quartile 1, shows us which two values the middle 50% lies between). Two lines, with a maximum longitude of 1.5 times the inter-quartile range, project from the upper and lower extremes of the boxes. If a case falls beyond the distance marked by these two lines it is called an outlying or deviating case, and is represented by a point which falls outside both the box and the lines projecting from the box. The main advantage of these box-plots is that they provide information for both the central values of the variable, and their degree of dispersal. The degree of dispersion tells us the extent of the consensus amongst our experts at the moment of evaluation. The smaller the box, the more agreement there is amongst our experts and, conversely, the longer the box the greater the disagreement.

## Graph 1

### Fields by year

Citizenship 2008	etc	etc
Representation 2008		
Governability 2008		
Civil society 2008		
International 2008		
Representation 2008		
Governability 2008		
Civil society 2008		
International 2008		

*Source: Author's own data taken from the analysis undertaken for this study.*

One of the virtues of an exhaustive evaluation which centres attention on 57 different items is the possibility of obtaining a fairly precise picture of where problems are concentrated. A general analysis of the indicators offers us a more detailed view of the areas where the quality of Spanish democracy is worst rated. There are 14 black-spots which failed to achieve a pass score – two more than in previous years – as can be observed in Table 2. Put another way: Spanish democracy failed to gain a pass mark in 20% of the indicators. The most serious problem detected by the experts was political corruption: the only indicator which fell below the score of 3. It should be noted that the indicator which has fallen most during the past year is that which measures the guarantees that the Spanish democratic system offers for the proper and legal financing of political parties. Although the law has not been changed in the last year, suspicions aroused by the *Caso Gürtel*

concerning the illegal financing of the main opposition party have been responsible for increasing the distrust of the experts. Corruption seriously damages confidence in democratic institutions. If public officials abuse their office for personal or party gain then the essence of representation is broken. The perception of the problem of corruption has worsened so much over the last year that the political class has risen to become the third greatest problem for the Spanish.

## **Table 2**

### **Main deficiencies of Spanish democracy**

Absence of corruption  
Economic independence of political power  
Equal access to power  
Accessibility of representatives  
Respectful media  
No international interference  
Public participation  
Cooperation between levels of governments  
Independence of parties  
Prosecution of corruption  
Parties' proximity to public  
Independent Press  
Principle of international cooperation  
Plurality of information

*Source: Author's own data taken from the analysis undertaken for this study.*

The identification of black-spots in the Spanish democratic system should enable policies to be developed to eliminate them. Knowledge of the most important and valued characteristics of our democracy should help us to

monitor their survival. Spanish democracy achieved a good mark in 15 indicators (see Table 3). The best marks - the only ones to score above 8 - are those related to clean and fair elections. This is a fundamental condition for assessing a democratic regime: the fairness and freedom of Spanish elections have never been challenged. Turning to another issue: year after year in Spain, the experts' evaluations highlight the elevated degree of co-existence and respect between diverse social groups, including those of even the smallest minorities. This is a result that is especially valuable in the context of financial crisis, and it is notable that the crisis does not seem to have damaged the peaceful co-existence between the most disadvantaged, nor limited the political and social rights of those living in Spain.

**Table 3**

**Principal strengths of Spanish democracy**

Score 2010

Clean elections	
Voting freedom	
Freedom of association	
Trade union freedom	
Religious freedom	
Health protection	
Freedom of expression	
Compliance with European obligations	
Freedom to live where one chooses	
Peaceful co-existence of social groups	
Minority rights	
Respect for international law	
Freedom of minority languages	
Stable governments	

*Source: Author's own data taken from the analysis undertaken for this study.*

### 3. Area results

Between the five fields and the 57 indicators used to assess the quality of Spanish democracy the methodology of the democratic audit has established 11 areas of measurement. The first field is that of citizenship, laws and rights, and is broken-down into four areas: *citizenship*, which principally measures how inclusive democracy is and its ability to treat all citizens as human beings; *the rule of law*, which measures to what extent the behaviour of its representatives and those represented is governed by a legal framework, and whether these laws are implemented and developed within pre-established regulations; the area of *civil and political rights*, which focuses on the degree of protection afforded to the basic rights of citizens, such as freedom of expression, association and information; and, finally, an area that encompasses *economic and social rights*, which measures inequalities related to the availability of basic welfare services such as health, education and employment.

The second field of political representation contains two areas: that of *free and fair elections*, which examines the functioning of the electoral process; and that of the *democratic role of political parties*, assessing the quality of their ability to represent the interests of the electorate.

The third field – governability and accountability – provides information about three distinct areas: firstly, information about the *activity of the Government* and its ability to implement public policies; secondly, information about the possibilities that the system offers for *the control of governmental activity*; and thirdly, *the level of corruption* existing in political life.

The fourth field refers to civil society, measuring the *quality of the media* and also the level and type of public *political participation*. Finally, this assessment includes an additional field which measures the presence of *democratic values in international relations*.

## Graph 2

### **Areas of democracy (2010)**

Citizenship

Economic and social rights

Control of government

Role of the media

Rule of law

Free and fair elections

Government action

Political participation

Civic and political rights

Democratic role of the parties

Absence of corruption

International affairs

*Source: Author's own data taken from the analysis undertaken for this study.*

Although Spanish democracy only failed in the field of civil society, the following graph shows that in addition to a fail mark in the areas of political participation and the media – both components of the civil society field – the experts awarded a very negative evaluation to the area measuring political corruption. In the following pages the results of the indicators in each area will be presented in order to give a complete explanatory picture which will enable us to analyse how far the decline in the evaluation of our democracy is a result of the economic context, or whether it has been caused by the political context and the (mis-) conduct of the politicians. From the first year of the audit the data showed that Spain did not have any particular problems with the quality of the democratic rules governing our political system; rather the problems and short-comings were mainly to do with the politicians.

## **A. Citizenship, laws and rights**

The good news is that there are no big changes from last year and this field has continued to be one of the most highly rated (Table 4). Peaceful co-existence may become more complicated when financial resources and jobs become scarcer and governments are tempted to take measures that harm the living conditions of immigrants. Fortunately, the economic crisis has not resulted in a loss of rights for the immigrant population living in Spain. The Government has stood firm this year against popular pressure to curtail the social rights of immigrants. Following the controversy sparked by the city of Vic (Barcelona) where the local authorities tried to deny the registration of immigrants in their town, the President announced that he would not tolerate that “because of a municipal trick there might be people who would be denied the right to receive medical care or attend school”.<sup>117</sup> This announcement very succinctly encapsulated the democratic coverage which all people living in Spain enjoy.

### **Table 4**

#### **Citizenship, laws and rights**

##### **1. Citizenship**

###### **A.1.1. – Consensus regarding borders**

###### **A.1.2. - Minority rights**

###### **A.1.3. – Citizens’ rights**

###### **A.1.4. – Co-existence of social groups**

###### **A.1.5. – Territorial co-existence**

*Source: Author’s own data taken from the analysis undertaken for this study.*

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<sup>117</sup> Statement made on 20.01.2010 in Strasbourg.

The relative worsening of a problem that other neighbouring advanced democracies do not have is also worth highlighting: consensus over borders. Sensitivity on this issue, which had improved during the previous year, has significantly worsened during the last one. And this has occurred despite the fact that for the first time the socialist party is the majority party in two of the regions where there is fiercest opposition to being considered part of the Spanish State: Catalonia and the Basque Country.

Secondly, opinions on the rule of law, as can be expected, are never black or white (Table 5). While compliance with the law by citizens and the civil service does not present problems in Spain - unlike the stereotypical attitudes attributed to other countries in the south of Europe, opinion about the justice system has fallen since 2008. This decline is analysed in detail elsewhere in this book. Without entering into the debate over the ideal role of judges within the justice system, it is evident that in the last year the strike by judges, some noisy disputes in the *Consejo General del Poder Judicial*, and the functioning of the Constitutional Court itself, with the problems associated with the renewal of its members and its inability to arrive at an agreement over the constitutionality of the Statute of Catalonia, have not presented a very favourable image of the judiciary in general. On the contrary, the idea has grown that some judges are guided more by their ideological beliefs, either personal or political ones, than by a dispassionate interpretation of the law. The public is even more pessimistic about the state of justice in Spain than the experts consulted on this issue for the democratic audit, but they save the worst of their ratings to denounce the lack of impartiality and the discriminatory treatment meted out to those who have fewer economic resources, as is evidenced by the Barometer on the Quality of Democracy of the *CIS* and the *IESA-CSIS*.<sup>118</sup>

**Table 5**  
**Citizenship, laws and rights**

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<sup>118</sup> The public awarded a score of 4.3 to the independence of the judges, compared with that of a 5.42 awarded by the experts.

## **2. Rule of law**

diff.

A.2.1. – Compliance with the law

A.2.2. – Civil service compliance with the law

A.2.3. – Independence of judges

A.2.4. - Equal access to justice

A.2.5. – Impartiality of penal law

*Source: Author's own data taken from the analysis undertaken for this study.*

All the indicators which measured the respect for basic civil and political rights received a high rating (Table 6). It may be worth placing this positive fact of Spanish democracy in an international context where there is a continuing movement to restrict the rights of citizens supposedly in order to ensure a greater degree of security in the fight against international terrorism. In Spain, a country used to fighting against the terrorism of ETA, the decision of the Government not to restrict basic rights because of this global struggle has been viewed positively.

## **Table 6**

### **Citizenship, laws and rights**

## **3. Civil and political rights**

Diff.

A.3.1. – Protection of freedom of expression

A.3.2. – Protection of free association

A.3.3. – Protection of religious freedom

A.3.4. – Freedom of language

A.3.5. – Freedom to choose where to live

*Source: Author's own taken from survey data carried out for this study.*

## **Table 7**

### **Citizenship, laws and rights**

#### **4. Economic and social rights**

A.4.1. – Health protection

A.4.2. – Guaranteed education

A.4.3. – Respect for workers' rights

A.4.4. – Trade union freedom

*Source: Author's own data taken from the analysis undertaken for this study.*

Finally, the evaluators of Spanish democracy have awarded a high score to the commitment of the Government to confront the economic crisis without the loss of workers' economic and social rights. The indicators that measure this item have remained fairly steady compared with those of the previous year. Neither workers' rights nor trade unions' rights have been curtailed, nor those of education and health. According to the data gathered by the Barometer of the Quality of Democracy of the *CIS* and the *IESA-CSIC*, the public are more critical than the experts in their perception of the maintenance of workers' rights. The majority of the public does not award a pass mark to Spanish democracy on this point.

#### **A. Political representation**

In Spain we enjoy free and fair elections: an opinion that the experts coincided with year after year. What is criticised in the electoral system is the unfair treatment offered to minority groups. The small parties which stand for election nation-wide do not have a representation which accords with the popular backing they receive. In the last two years the evaluation of the representation of the Spanish Parliament has fallen by almost one point. It is the only indicator in this group that received a rating below 6 points. The

irruption on the political scene of the *Unión Progreso y Democracia (UPyD)* and the media coverage given to its spokeswoman, Rosa Díez, in spite of leading a minority party, has undoubtedly sensitised the experts on this theme given that the electoral system itself has not undergone any change.

## **Table 8**

### **Political representation**

#### **1. Free and fair elections**

B.1.1. – Freedom of vote

B.1.2. – Fair elections

B.1.3. – Electoral equality

B.1.4. – Guaranteed media access

B.1.5. – Equality of Vote

B.1.6. – A representative Parliament

B.1.7. – High electoral participation

*Source: Author's own data taken from the analysis undertaken for this study.*

It is worth noting that two of the indicators relating to the democratic role of Spanish political parties registered the sharpest falls of the whole survey (Table 9). These two indicators measure distinct aspects of the quality of democracy: one measures the contribution made by the opposition parties to Government accountability; and the other measures the degree of legality regulating the financing of political parties. However, the political situation of last year enables us to relate these aspects: 2009 was marked by the deepening of the economic crisis but also by the resurgence of high-profile political corruption (to be discussed in the following section). The *Caso Gürtel*, which affected the PP, has provided the most scandalous example of the extent and ramifications of corruption, of the political importance of those implicated, and of the leaks of the prosecution's evidence (see the chapter on corruption in this report 2010). The effect of this case on the negative

evaluation of the regulations for party financing appears obvious given, once again, that there have been no legal changes over the last few years. Similarly, the case has probably damaged the image of the PP and public confidence in it, and confirms the fact that, despite the economic crisis and the detrimental effect that this has on the Government, the main opposition party has scored extremely badly in terms of political trust, and according to the experts the assessment of their work as the opposition party has fallen half a point during the year.

## **Table 9**

### **Political representation**

#### **2. Democratic role of the parties**

B.2.1. – Party freedom

B.2.2. – Stable governments

B.2.3. – Effective opposition

B.2.4. – Independence of the parties

B.2.5. – Parties' proximity to public

*Source: Author's own data taken from the analysis undertaken for this study.*

#### **B. Governability and accountability**

According to the public, the two biggest problems in Spain remained the same as in 2008: unemployment and the economic situation. As long as economic stagnation lasts it does not appear that this opinion will alter. However, there is a novelty not only with respect to the previous year but to previous decades: politicians and their parties have become the third major problem facing the country, ahead of immigration, public safety and terrorism. This change can also be observed in the scores of our survey of experts. If we examine the five indicators which demonstrate the greatest falls in the ratings since 2008 – all of them over half a point – most of them are related to political corruption (Table 10). The Barometer of the Quality of

Democracy of the *CIS* and *IESA-CSIC* undertaken for 2009, posed a question for the first time about the ability of political power to resist economic pressures. The result showed that the public are also pessimistic on this point, although less so than the experts.<sup>119</sup> This issue has become one of the most important black-spots of our democratic system. The experts feel that Spanish governments cannot develop their political agendas if they clash with the interests of big business.

## **Table 10**

### **Governability and accountability**

#### **3. Corruption**

C.3.1. - Absence of corruption

C.3.2. – Economic independence of political power

C.3.3. – Prosecution of corruption

*Source: Author's own data taken from the analysis undertaken for this study.*

Despite all this, within the field of governability, control over the Government continues to enjoy good health (Table 11). None of the indicators within this section failed the test, although two of them showed a slight fall compared with the 2008 scores: on one hand, the experts believe that the ability of Parliament to hold the Government to account is growing weaker. Why should this be so if the composition of the Parliament is the same as the previous year and there have been no legal changes to its functioning? One of the reasons may relate to the different pacts agreed between the Government and other parliamentary parties since the 2008 elections. While up until now it has managed to achieve stable government with a parliamentary minority, the development of a negotiating strategy with *ad hoc* pacts in Parliament has meant that more minority group demands have

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<sup>119</sup> The public awarded a score of 4.02 compared with the experts' score of 3.36.

been included in the Government's policy activity. However, at the same time, this policy has prevented the main opposition party from carrying out various censuring initiatives related to government action. This bargaining power, which can inhibit the potential watchdog role of Parliament, is related to the second problem in the field of government accountability: the perception that the Government is getting worse at explaining its policies to the public. It is possible that the communications policy of the Government has been less effective because of having to improvise some changes to its positions in order to maintain parliamentary stability and social peace. Examples of this can be seen throughout 2009 affecting tax proposals, the abortion law, or the investment plans for R & D. Negotiations either with *Izquierda Unida*, *Convergencia i Unió*, or with the *Partido Nacionalista Vasco* have had a hidden element that has, in part, prevented the Government from transmitting a clear idea of their plans to the public. The image of a Government that says little and improvises much of its action has been extensive throughout the media and has penetrated deeply into the public psyche. It is logical that the experts have lowered their 2009 scores slightly in this area.

## **Table 11**

### **Governability and accountability**

#### **1. Control of Government**

##### **C.1.1. – Parliamentary powers**

##### **C.1.2. – Transparency of information**

##### **C.1.3. – Budgetary transparency**

##### **C.1.4. – Accountability of Government**

*Source: Author's own data taken from the analysis undertaken for this study.*

An examination of the section on Government activity reveals that the score relating to the cooperation between distinct levels of government is notable for its negative quality (Table 12). This problem is repeated annually and is growing increasingly worse. The political will in this area is as important as the institutional design, and a lack of cooperation between politicians has been visible throughout the last year, as evidenced by the failure of the conference of regional presidents, or the conflict generated between town halls, regional governments and central Government concerning the site of a nuclear cemetery. In such a decentralised democracy as Spain, it appears necessary that some steps are taken to address this negative view of inter-governmental cooperation. In any case, the distrust of our experts is directed more towards the sub-national levels of government rather than the central Government level. The score for the transparency and accountability of municipal and regional authorities is close to a fail, having fallen half a point in two years. It should not be forgotten that over these two years the cases of urban planning corruption have mainly affected the regional and municipal sphere, which would explain the moderate drop in the score on accountability.

There are two indicators that should be particularly sensitive to the negative economic environment: the efficiency of public services and the Government's ability to solve society's problems. Regarding the former, the best news for our welfare state – and one of the most characteristic of our political system – is the fact that the quality of our public services has remained constant. The need for public funds to solve the problems associated with unemployment could have been found at the expense of the rest of the public services, but in fact these are regarded as slightly improved compared with last year. However, the opinion of the experts differs from that of the public who, according to the Barometer of the *CIS* and *IESA-CSIC*, generally believe that since the crisis began the Government has become less sensitive to the main social demands. On the other hand, although the Government's ability to solve society's problems has fallen each year since the 2008 elections, this item still manages to score a respectable pass: close to 6 points on the scale.

## **Table 12**

### **Governability and Accountability**

#### **2. Government action**

C.2.1. - Ability to govern

C.2.2. – Efficiency of public services

C.2.3. – Effectiveness of regional & local authorities

C.2.4. – Regional & local authority responsibility

C.2.5. – Cooperation between levels of government

*Source: Author's own data taken from the analysis undertaken for this study.*

### **C. Civil society**

Year after year the field of civil society gains the lowest rating. The majority of studies carried out on political culture and participation confirm the low level of social capital and paucity of interest in political activity in Spain. On another plane, public confidence in the media is also on a steady decline (Table 13). While the low participation of Spaniards in the process of political decision-making has been condemned by the experts since the initiation of the democratic audit - and this profile has been maintained - it is also true that the indicators that measure the reliability, independence, and pluralism of the Spanish media have registered a significant decline in the last year.

## **Table 13**

### **Civic society and participation**

#### **1. The media**

D.1.1. – Media independence

D.1.2. – Media pluralism

D.1.3. - Press freedom

D.1.4. – Respectful media

*Source: Author's own data taken from the analysis undertaken for this study.*

The means of communication are one of the main political agents in our society. Their ability to influence the political agenda of governments and to form public opinion endows them with a very important relevance in democratic countries. Various indicators in areas where the media habitually exercises a strong influence have been negatively affected this year. In terms of freedom of expression, this year has not been a good one. In their annual report the NGO, *Reporteros sin Fronteras*, reduced the Spanish score by seven points, placing it at number 44 in the international rankings. The experts also warned about the decline in the plurality of Spanish news information. It might have been expected that the year of the definitive expansion of digital terrestrial television, with the consequent amplification of free television channels, would have increased the possibilities of obtaining distinct news information, but perhaps what has carried more weight in the evaluations of the experts has been the merger plans between the main channels of private television: *Tele 5* with *La Cuatro* and, possibly, *La Sexta* with *Antena 3*. In any case, the indicator which presents the biggest drop compared with the previous year is that which measures the professionalism of the media and its respect for the public. In a scenario of crisis that has affected all forms of media they have relaxed their codes of conduct and style guides in order to try to win larger audiences/readerships than their competitors. For example, the public was scandalised by the false reports of an accusation of pederasty and child abuse of a father in the Canary Islands which included photos of the accused on the front pages of the major national newspapers and TV news broadcasts. It is also possible that the ratings of the media were affected by the alarmism of some of the media with regard to the coverage given to the Type 'A' flu epidemic. It should also

be noted that public confidence in the professionalism and independence of the media did not obtain a pass mark in the Barometer on the quality of democracy study carried out in February 2009.

## **Table 14**

### **Civic society and participation**

#### **2. Political participation**

D.2.1. – Independent associations

D.2.2. – Public participation

D.2.3. – Women's participation

D.2.4. – Equal access to power

D.2.5. – Accessibility to representatives

*Source: Author's own data taken from the analysis undertaken for this study.*

These bad results in the field of civil society mask the healthy state of the only indicator in this sphere which has steadily improved over the three years of the audit, finally obtaining a pass mark: the participation of women in political life. Progressing beyond the parity of women in the composition of both of the Zapatero cabinets and the record number of women now in the Spanish Parliament, the presence of women in the front lines of Spanish politics has never been so numerous. One of the main novelties of this year was that the election of Leire Pajín as the secretary of organisation of the PSOE meant that the spokespersons for the two principal parties were both women: the secretary of organisation for the PSOE and María Dolores de Cospedal, the general secretary of the PP. Furthermore, the two women were both senators and therefore their dialectic confrontation was habitual in the Senate Chamber. This duel was repeated in the Parliament by the crossfire of debate between the vice-president of the Government, M<sup>a</sup> Teresa de la Vega and the parliamentary spokesperson of the PP, Soraya

Sáenz de Santamaria. Finally, the person responsible for Government economic policy was also a woman, Elena Salgado, who, after substituting the highly-respected Pedro Solbes, became the economic vice-president of the Government. Thus, the policy of the visible incorporation of women into position of high political responsibility has been positively evaluated, and is the only indicator that has moved from a fail to a pass mark in the last three years.

#### **D. Foreign affairs**

In the opinion of the experts, foreign affairs have developed within a healthy democratic framework. There has hardly been any variation over the last two years, and it continues to be the field receiving the second best score. In spite of this, there is one indicator within this field that obtained one of the ten worst ratings of the 57 themes contained in the survey (Table 15). According to those who awarded this extremely low score, the activity of the Government is conditioned and mediated by outside international agents in both the political and the economic sphere. The problem with this issue is that it is unclear what would be the best action to improve the quality of Spanish democracy in legislative terms. The indicator was developed to measure the quality of British democracy where, as is well-known, the cession of sovereignty and power to international institutions is viewed very negatively. The effort made by Spain and other countries to achieve advances in the political sphere of the EU, and to attend to the recommendations of other international organisms – even when it could mean some loss of sovereignty – does not necessarily imply a drop in the quality of national democracy.

#### **Table 15**

##### **International field**

##### **1. International relations**

- E.1.1. – No international interference
- E.1.2. – Principle of international cooperation
- E.1.3. – Respect for international law
- E.1.4. – Compliance with European obligations
- E.1.5. – Promotion of international rights

*Source: Author's own data taken from the analysis undertaken for this study.*

## **Conclusions**

1. The evaluation of Spanish democracy obtained a pass mark – almost 6 on a scale of ten - but it affirmed the downward trend of the audit from the score obtained in the first year of measurement in 2008. In that year, the beginning of the second legislature of the Government of Rodriguez Zapatero coincided with the start of the economic crisis, at least from the point of view of the public. In the following two years the quality of Spanish democracy has lost almost half a point according to the audit. It is possible to attribute either economic or political causes to this declining trend. The economic data for 2009 were the worst for the last 30 years, and this fact could well have provoked a more dramatic fall in the evaluation of Spanish democracy; but the overall design of the survey is based on indicators which measure the process and conduct of political elements, and not the economic influences on democracy. Therefore we must deduce that the political - rather than the economic - context has mainly accounted for the drop in the rating.
2. In spite of the economic crisis, there has not been a decline in the rights of workers, neither has there been a fall in the provision of the major public services, nor a restriction in immigrants rights although this has occurred in some neighbouring countries. These indicators do not demonstrate any significant loss in the quality of democracy.

3. Although there have not been setbacks in the evaluation of social protection in Spain, the political system has been negatively valued in terms of its ability to solve the economic crisis. The perception of the autonomy of our Government to develop its policies free from the interests of big business has declined each year. Furthermore, there has been a sharp fall of confidence in the ability of government action to solve the most important problems affecting its citizens.
4. Corruption has become the major problem and the principal weakness of Spanish democracy. The *Gürtel Case* has played a leading role in this impression, but has only involved the PP. The fall in the score of the indicator measuring public confidence in the ability of the opposition to control Government may be associated with this.
5. The economic crisis has also affected the assessment of the quality of the media in Spain: its independence and its professionalism. The inevitable mergers between the main private TV channels have given the impression of a loss of pluralism in terms of news information. The business interests of the communication companies in their dealings with the politicians, intensified by the crisis, have never been more explicit. The professionalism of the media is one of the indicators that have suffered the greatest fall compared to previous years. This fact is reflected in the loss of public confidence in the media.
6. Finally, we believe that in a bad year for Spanish democracy it is worth highlighting the increased presence of women in political life. This indicator has risen from a fail to a pass mark during this year.

## **APPENDIX I**

### **Methodological note**

A detailed description of the study can be found in the Report on Spanish Democracy-2008 (IDE-2008) where an explanation is given of the origin of the project, its methodology and the selection of the sample. The questionnaire, mailed and completed by internet, is identical to that of last year (IDE 2009) which eliminated the request for an overall assessment of the five fields, and which included five new questions taken from the *CIS* study 2701 on the quality of democracy in order to make a comparison between the opinion of the experts and those of the public. The questionnaire is reproduced in Appendix II.

This year the sample was selected in a similar manner to last year's. The original sample of 320 experts was drawn mainly from the circles of political science and sociology and, to a lesser extent, areas such as the economy, law, history and journalism. From this sample of 320, 118 people answered the full questionnaire signifying a 37% response rate. 54 experts have taken part in the survey for all three years, corresponding to 46% of the total responses for 2010. This year the number of participants has dropped by 9% compared to the figures for 2009; but is 6% bigger than the original sample in 2008.

The sample, like the population it attempts to reflect, presents a certain gender bias: in 2008, 35% of those responding were women; in 2010 the percentage has dropped to 30%. A similar trend has occurred with the older experts in terms of age distribution. However, the proportion of younger people responding has been increasing each year. If in 2008, only 12% were under 40, in 2009 this percentage had risen to 23%. In contrast, the proportion of those born before 1960 fell from 64% in 2008 to 49% in 2010 although in this instance the transformation began in 2009 when the sample

was extended to people listed in the bulletins of the *Federación Española de Sociología (FES)* and the *Asociación Española de Ciencia Política (AECPA)*.

There is also a certain territorial bias. The great majority of those surveyed were born in Madrid (36%), with 15% in Catalonia, 9% in Andalusia, and 8% in the Basque country. The percentages would not be very dissimilar if the region of residency were substituted for that of birth: Madrid is the place of residence for 43%, followed by Catalonia with 12%, Andalusia 10% and the Basque Country with 6%.

The fieldwork was once again undertaken by the *Laboratorio de Encuestas de la Universidad de Salamanca (LETTI)*.

## **APPENDIX II**

### **The Questionnaire**

#### **Presentation**

Under the auspices of the *Informe sobre Democracia en España*, edited by the *Fundación Alternativas*, the University of Salamanca is producing a quantitative study using the methodology of the Democratic Audit developed at Essex University. You have been selected as an expert to give your opinion on the functioning of democracy in Spain. We would greatly appreciate your participation. If you complete the questionnaire – and if you were willing – we would include your name amongst the list of participants. Independently from the granting of this permission we would also like to send you a small gift in recognition of your effort and collaboration.

In addition, and strictly according to the laws on the secrecy of statistics and the protection of personal data, we guarantee the total anonymity and secrecy of your replies. Once the information has been recorded in an anonymous form, individual identification will be immediately destroyed.

### **The questionnaire on the functioning of democracy**

Below we offer the statements relating to the functioning of Spanish democracy, grouped into five categories, and based on the criteria selected by the Human Rights Centre at Essex University (UK). The five categories are: a) Citizens' rights and the rule of law; b) political representation; c) governability and political responsibility; d) the participation of civil society and e) the international dimension of Spanish democracy. We ask you to evaluate each statement on a scale of 0 to 10 according to the degree that Spanish society and politics approximate to these concepts of an ideal democracy. A zero indicates that Spain is a far from experiencing the objective of the statement, and a 10, on the contrary, reflects that the completion of the objective is optimum.

### **Questionnaire**

#### **Citizenship, laws and rights**

1. There is consensus regarding the configuration of the state frontiers as defined in the Constitution.
2. The rights of ethnic, cultural, religious and sexual minorities are protected.
3. The citizenship rights of all of those living in Spain, irrespective of their nationality, are recognised.
4. The institutional design of Spanish democracy allows all social groups to live peacefully together.

5. The institutional design of Spanish democracy allows all territorial groups to live in peace together.

#### **Rule of law.**

6. Compliance with the law is observed throughout the nation.
7. Civil servants respect the law in the fulfilment of their duties.
8. Judges exercise independence in the fulfilment of their duties.
9. Equal access to justice is guaranteed for all citizens.
10. Penal law is applied impartially.

#### **Civil and political rights**

11. Freedom of expression is sufficiently respected.
12. Freedom of association and reunion is sufficiently respected.
13. Freedom of religious practice is sufficiently respected.
14. The right of citizens to speak their own language is sufficiently respected.
15. The right to chose one's own life-style is respected.

#### **Economic and social rights**

16. The citizens' right to health is guaranteed by the public authorities.
17. The right to a decent education is guaranteed by the State.
18. The rights of workers are respected by the employers.
19. Trade unions, professional associations and other such bodies are free to organise and represent the interests of their members.

#### **Political representation**

##### **Free and fair elections**

20. Citizens are free to exercise their right to vote without coercion or intimidation.
21. The electoral process is free and fair.

22. Political parties can participate in elections under equal conditions.
23. The access of candidates and political parties to the means of communication is guaranteed.
24. The vote of each citizen is of equal value.
25. Parliament reflects the diversity of the electorate.
26. There is a high level of participation in elections.

### **The democratic role of the political parties**

27. Citizens may establish, organise and maintain political parties without legal or institutional interference.
28. The party political system facilitates the formation of stable governments.
29. The parties in opposition contribute to the accountability of the government.
30. The system of financing political parties guarantees their independence from private interests.
31. Political parties are attentive to the concerns and interests of the people.

### **Governability and accountability**

32. Parliamentary powers are sufficiently wide and effective for investigating Government activity and demanding accountability.
33. Public access to reliable information is guaranteed by the publication of trustworthy data and statistics.
34. The procedures for approving and applying the State budget are transparent and democratic.
35. The Government is obliged to justify the activities it proposes.

### **Government action**

36. The Government is capable of resolving the basic problems of society.
37. Public services meet the needs of their consumers.

38. Regional and local authorities have the necessary means and powers to fulfil their responsibilities.

39. Regional governments and local councils are subject to democratic criteria of transparency and accountability.

40. Cooperation exists between the different levels of government.

### **Corruption**

41. Civil servants exercise objectivity in accomplishing their tasks without being subject to political party dictates.

42. Political power is free from pressure from economic powers.

43. The Spanish institutional system detects and punishes cases of political corruption.

### **Civil society and participation**

#### **The means of communication**

44. The media is free from political pressure.

45. The media reflects the plurality of public opinion.

46. The media has the freedom and capacity to denounce excesses of political or economic power.

47. Citizens feel free from invasions of their privacy by the media.

#### **Political participation**

48. Voluntary associations, citizens' organisations and social movements are free from political pressure.

49. Citizens actively participate in voluntary associations and social movements.

50. The participation of women in political life is prevalent at all levels.

51. There is equality of access to political power for all social groups.

52. Political representatives are accessible to the public.

### **The international dimension of Spanish democracy**

53. Political power is free from international interference, both economic and political.

54. The relationships between political power and international organisations are based on principles of transparency and cooperation.

55. The Government respects international law.

56. The Government fulfils its European Union obligations.

57. The Government supports human rights and democracy beyond its frontiers.

### **General Questions (CIS Study 2701)**

G1

People often have different points of view about which is the most important characteristic of democracy. From the list below choose the characteristic which you think is the most essential for a democracy (only choose one).

- a) Regular elections
- b) An economy which ensures a dignified salary
- c) An impartial judicial system
- d) Respect for minorities
- e) Freedom of expression
- f) None

G2

In general, do you feel very satisfied, fairly, somewhat, little, or not at all satisfied with the way democracy functions in Spain?

- a) Very satisfied
- b) Fairly satisfied
- c) Somewhat satisfied

- d) Hardly satisfied
- e) Not at all satisfied

### G3

How much do you think that inequality in Spain has been reduced during the thirty years of democracy?

- a) A lot
- b) Quite a lot
- c) Somewhat
- d) Not much
- e) Not at all

### G4

Below are a series of statements relating to the functioning of democracy. We would like you to indicate your degree of agreement using a scale of 1 (totally disagree) to 5 (totally agree).

- a) The legal system should treat rich and poor the same
- b) The electoral system benefits regional and nationalist parties
- c) The Spanish electoral system prejudices small parties
- d) Closed lists are anti-democratic
- e) Parties choose their candidates by democratic procedures
- f) There is an adequate choice of parties to vote for in elections
- g) Governments base their decisions on the preferences of the majority

### G5

Out of a 100 citizens how many would you say go about their daily business respecting all the laws?

## Final questions

Finally, we would like to ask you five additional questions.

F1

Are you:

Male

Female

F2

What decade were you born in?

1920

1930

1940

1950

1960

1970

1980

F3

Which autonomous region were you born in?

F4

In which province do you currently reside?

F5

Would you allow your name to appear in the list of those who have contributed to this study, or would you prefer to remain anonymous?

Finally, if you would like to receive a gift for collaborating in this study, would you please send an e-mail with the address where you would like it to be sent to the following e-mail address: [xxx@usal.es](mailto:xxx@usal.es). We would like to remind you that whatever your answers might be to the two final questions, your individual opinion will remain anonymous and only be published as part of a group statistic

### **Appendix III.**

#### **List of the participants in 2010 who have agreed that their names may be published:**

Lola Abelló, Ramón Adell Argiles, Fernando Aguiar, Miguel Ángel Aguilar, Paloma Aguilar Fernández, Manuel Alcántara Sáez, Francisco Alvira Martín, Eva Anduiza Perea, Xosé Carlos Arias, Gonzalo Banjul, Roberto Barbeit, Germá Bel, Juana Bengoa, Anselm Bodoque, Carles Boix, Joan Botella Corral, Fermín Bouza Álvarez, Ignasi Brunet Icart, María Bustelo Ruesta, Rafael Bustos Gisbert, Rafael Caparrós, José Luis Cascajo Castro, Antonio J. Castillo, Rafael Chaves, Elisa Chuliá Rodrigo, Cesar Colino, Rafael Conde, Ana Corral, Antón Costas, Henar Criado Olmos, Margarita De Luxan, Irene Delgado, Mar Díaz Varela, Federico Durán, Rafael Durán Muñoz, Mariano Fernández Enguita, Pablo Fernández Vázquez, Joan Font Fabregas, Flavia Freidenberg, Carmen Gallástegui, Gema García Albacete, Ester García Sánchez, Antonio Garrigues Walker, Mónica Gelambi, Juan Gimeno, Carlos Gómez Bahillo, Cristóbal Gómez Benito, José Vicente Gómez Rivas, Ander Gurrutxaga, Rudolfo Gutiérrez Palacios, Alberto Jiménez, Fernando Jiménez Sánchez, Santos Juliá, Ignacio Lago Peñas, Emilio Lamo de Espinosa, Sebastián Lavezzolo, Jesús Lizcano, Iván

Llamazares, Eduardo López Aranguren, J Lozano, Joan Marcet, Oscar Martinez Tapia, Josu Mezo Aranzibia, Juan Montabes Pereira, Laura Morales de Ulzurrun, Javier Morales Hernández, M. Luz Morán Calvo Sotelo, Luis Moreno Fernández, Eduardo Moyano Estrada, Alonso Muñoz Pérez, Soledad Murillo, Blanca Olías de Lima Gete, Pablo Oñate Rubalcaba, Félix Ortega Gutiérrez, Jaime Pastor Verdú, Alfonso Pérez Agote, Maria del Mar Prieto Martínez, Ramón Ramos, M. Antonia Ruiz, Rubén Ruiz-Rufino, Carmen Sáez Lara, Leire Salazar, Julio Segura, Felipe Serrano, José Juan Toharia Cortés, Teresa Torns Martín, René Torres-Ruiz, Ángel Valencia, Francisco J. Vanaclocha Bellver, Ramón Vargas-Machuca Ortega, Tania Verge, Jorge Verstryngge Rojas y Manuel Villoria.

# 12 **Statistical Appendix**

## **Graph 1**

### **GDP, employment and productivity**

GDP                      Employment                      Productivity

%

1st quarter '04

2nd quarter

3rd quarter

4<sup>th</sup> quarter

Data corrected for season and calendar year

*Source: INE (National Institute of Statistics)*

## **Graph 2**

### **Employment rate (Spain and the EU)**

Spain                      EU 27                      EMU

%

1st quarter '04

2nd quarter

3rd quarter

4<sup>th</sup> quarter

*Source: EPA, INE*

### **Graph 3**

#### **Inflation rate (Spain and the EU)**

Spain

EU 27

EMU

%

Jan. '04

May

Sept.....

*Source: Eurostat*

### **Graph 4**

#### **Labour costs**

Labour costs

CPI

Gain (+) or loss (-) of purchasing power

%

1st quarter '04

3rd quarter



Castille and Leon  
Extremadura  
Asturias  
Balearic Islands  
Cantabria  
Madrid  
Murcia  
La Rioja  
Total group

Art. 151  
Andalusia  
Canary Islands  
Catalonia  
Galicia  
Valencia  
Total group

Total Regional Authorities

Local Administrations  
Central Administration  
Total Public Administrations

NB: In 2005, active debt at the end of the quarter on regional GDP of 2004  
(base year: 1995)

*Source: Bank of Spain*

## **Graph 6**

**Current Account balances and itemised balance sheets in millions of  
euro**

Current A/C Balance

Balance of services

Revenue Balance

Trade Balance

Balance of transfers

% of GDP

*Source: Bank of Spain and INE*

### **Graph 7**

#### **GDP per inhabitant 2000-2008 (Spain=100)**

%

Basque Country

Madrid

Navarre

Catalonia

Aragon

Balearic Islands

La Rioja

Cantabria

**Spain**

Castille & Leon

Asturias

Ceuta

Melilla

Valencia

Canary Islands

Galicia

Murcia

Andalusia  
Castille La Mancha  
Extremadura

*Source: INE*

## **Table 2**

### **GDP per inhabitant per PPS; EU-27=100**

Madrid  
Basque Country  
Navarre  
Catalonia  
Aragon  
Balearic Islands  
La Rioja  
Cantabria  
**Spain**  
Castille and Leon  
Ceuta  
Asturias  
Valencia  
Melilla  
Canary Islands  
Galicia  
Murcia  
Castille La Mancha  
Andalusia  
Extremadura

*NB: Eurostat have not published data for the latest years.*

Source: Eurostat

### Table 3

**% of spending on R&D with respect to GDP at market prices per Regional Authority**

**Series 2000-2008**

Madrid

Basque Country

Navarre

Catalonia

**Spain**

Castille and Leon

Valencia

Galicia

Andalusia

Aragon

La Rioja

Cantabria

Asturias

Murcia

Extremadura

Castille La Mancha

Canary Islands

Balearic Islands

Ceuta & Melilla

*Source: INE: Spanish regional accounts. GDPpm BASE 2000, except for year 2000 when the GDPpm BASE was 1995.*

## **Table 4**

### **People using internet during the last three months**

Results per region

Evolution of personal data (2004-2008) per regional authority, type of use of ICT, and period

Units: horizontal % of people (16-74 years old)

Madrid

Catalonia

Navarre

Balearic Islands

Aragon

Basque Country

Valencia

Cantabria

#### **Spain**

Asturias

Castille & Leon

Canary Islands

Castille La Mancha

Andalusia

La Rioja

Melilla

Murcia

Galicia

Extremadura

Ceuta

*Source: INE*

## **Table 5**

### **Households with internet access**

Results per regional authority

Evolution of housing data (2004-2009) per regional authority, type of equipment and period

Horizontal percentages of households with at least one member aged 16-74

Madrid

Catalonia

Basque Country

Balearic Islands

Navarre

Cantabria

Asturias

Canary Islands

Aragon

**Spain**

La Rioja

Melilla

Valencia

Andalusia

Ceuta

Murcia

Castille La Mancha

Castille & Leon

Galicia

Extremadura

*Source: INE*

## **Table 6**

### **Companies with internet connection**

%

Balearic Islands

Cantabria

Navarre

Aragon

Catalonia

Asturias

Basque Country

Castille & Leon

Madrid

La Rioja

Extremadura

Valencia

**Spain**

Canary Islands

Andalusia

Galicia

Murcia

Castille La Mancha

Ceuta & Melilla

*Source: INE*

## **Table 7**

### **People using computers at least once a week**

%

Madrid

Catalonia

Basque Country

**Spain**

Valencia

Navarre

Balearic Islands

Galicia

Andalusia

Aragon

Ceuta & Melilla

Cantabria

Asturias

Canary Islands

Castille & Leon

Extremadura

Murcia

La Rioja

Castille La Mancha

*Source: INE*

## **Table 8**

### **Salary remuneration in % of Gross Added Value**

Andalusia  
Aragon  
Asturias  
Balearic Islands  
Canary Islands  
Cantabria  
Castille La Mancha  
Castille & Leon  
Catalonia  
Region of Valencia  
Extremadura  
Galicia  
Madrid  
Murcia  
Navarre  
Basque Country  
La Rioja  
Ceuta  
Melilla  
**Spain**

*P: provisional*

*A: estimated*

*Source: INE*

## **Table 9**

### **Social Security contributory pensions**

In thousands

Andalusia  
Aragon  
Asturias  
Balearic Islands  
Canary Islands  
Cantabria  
Castille La Mancha  
Castille & Leon  
Catalonia  
Region of Valencia  
Extremadura  
Galicia  
Madrid  
Murcia  
Navarre  
Basque Country  
La Rioja  
Ceuta and Melilla  
**Spain**

*Source: Ministry of Labour and Immigration (BEL)*

**Table 10**

**Non-contributory pensions**

In thousands

Andalusia  
Aragon  
Asturias

Balearic Islands  
Canary Islands  
Cantabria  
Castille La Mancha  
Castille & Leon  
Catalonia  
Region of Valencia  
Extremadura  
Galicia  
Madrid  
Murcia  
Navarre  
Basque Country  
La Rioja  
Ceuta and Melilla  
**Spain**

*Source: Ministry of Labour and Immigration (BEL)*

## **Table 11**

### **Unemployment benefit**

In thousands of beneficiaries

Aragon  
Asturias  
Balearic Islands  
Canary Islands  
Cantabria  
Castille La Mancha  
Castille & Leon  
Catalonia

Region of Valencia  
Extremadura  
Galicia  
Madrid  
Murcia  
Navarre  
Basque Country  
La Rioja  
Ceuta and Melilla  
**Spain**

*Source: Ministry of Labour and Immigration (BEL)*

## **Graph 8**

### **Spanish freehold house prices**

Spain                      Basque Country                      Extremadura

In euro per square metre

1st quarter '04

2nd quarter

3rd quarter

4<sup>th</sup> quarter

Source: MVIV (Ministry of Housing)

## **Graph 9**

## **Access to housing**

Spain                      Balearic Islands                      Extremadura

Mortgage payments as % of average salary

1st quarter '04

2nd quarter

3rd quarter

4<sup>th</sup> quarter

*Source: Bank of Spain and AFI*

## **Table 12**

### **Traffic Accidents**

**Total            per 1,000 car registrations                      per 1,000 inhabitants**

Andalusia

Aragon

Asturias

Balearic Islands

Canary Islands

Cantabria

Castille La Mancha

Castille & Leon

Catalonia

Region of Valencia

Extremadura

Galicia

Madrid

Murcia  
Navarre  
Basque Country  
La Rioja  
Ceuta  
Melilla  
**Spain**

- *Amalgamated data for Ceuta & Melilla*

*Source: Dirección General de Tráfico (DGT)*

### **Table 13**

#### **Amount of land affected by forest fires**

In hectares

Galicia  
Castille & Leon  
Andalusia  
Extremadura  
Canary Islands  
Castille La Mancha  
Asturias  
Valencia  
Cantabria  
Catalonia  
Aragon  
Madrid  
Navarre  
Basque Country

Murcia  
Balearic Islands  
La Rioja  
Ceuta  
Melilla  
**Spain**  
A: estimated

*Source: Ministry of the Environment. Dept. of defence against forest fires*

**Table 14.1**

**Formal accusations of gender violence by partner or ex-partner  
(women)**

Andalusia  
Aragon  
Asturias  
Balearic Islands  
Canary Islands  
Cantabria  
Castille La Mancha  
Castille & Leon  
Catalonia  
Region of Valencia  
Extremadura  
Galicia  
Madrid  
Murcia  
Navarre  
Basque Country  
La Rioja

Ceuta  
Melilla  
**Spain**

*NB: No more recent data exists*  
*Source: Ministry of Equality*

**Table 14. 2.**  
**Formal accusations of gender violence by partner or ex-partner (men)**

Andalusia  
Aragon  
Asturias  
Balearic Islands  
Canary Islands  
Cantabria  
Castille La Mancha  
Castille & Leon  
Catalonia  
Region of Valencia  
Extremadura  
Galicia  
Madrid  
Murcia  
Navarre  
Basque Country  
La Rioja  
Ceuta  
Melilla  
**Spain**

*NB: No more recent data exists*  
*Source: Ministry of Equality*

**Table 14.3**

**Formal accusations of gender violence by partner or ex-partner**

Women, rate per million

Melilla

Canary Islands

Balearic Islands

Ceuta

Murcia

Valencia

Andalusia

Madrid

**Spain**

Castille & Leon

Asturias

La Rioja

Aragon

Castille La Mancha

Galicia

Extremadura

Cantabria

Navarre

Catalonia\*

Basque Country\*

\*For Catalonia and the Basque Country the only available formal accusations are those made to the police forces. For this reason the rate per million of women has not been included.

*Source: Ministry of Home Affairs, and data from the census.*

**Table 15**

**Convictions according to sentencing regional authority**

Andalusia

Aragon

Asturias

Balearic Islands

Canary Islands

Cantabria

Castille La Mancha

Castilla & Leon

Catalonia

Valencia

Extremadura

Galicia

Madrid

Murcia

Navarre

Basque Country

La Rioja

Ceuta

Melilla

**Spain**

*Source: INE*

**Table 16**

## **Accidents at work resulting in sick leave**

Andalusia

Aragon

Asturias

Balearic Islands

Canary Islands

Cantabria

Catalonia

Region of Valencia

Castilla & Leon

Castilla La Mancha

Extremadura

Galicia

Madrid

Murcia

Navarre

Basque Country

La Rioja

Ceuta

Melilla

**Spain**

*A: estimated*

*Source Ministerio de Trabajo y Inmigración (BEL)*

## **Table 17**

### **Strikes**

Provincial

Regional

National

2009 (until October)

**Number of participants (in thousands)**

2009 (until October)

**Working days lost (in thousands)**

2009 (until October)

*Source: Ministry of Labour and Immigration (BEL)*

**Table 18**

**Political indicators**

Jan.      April      July      Oct

**Evaluation of political leaders**

**Evaluation of the political situation**

Very good

Good

Moderate

Bad

Very bad

Don't know/No answer

**Expectations of the political situation**

Better

Same

Worse

Don't know/No answer

**Evaluation of the economic situation**

Very good

Good

Moderate

Bad

Very bad

Don't know/No answer

**Expectations of the economic situation**

Better

Same

Worse

Don't know/No answer

**Evaluation of the Government**

Very good

Good

Moderate

Bad

Very bad

Don't know/No answer

**Evaluation of the opposition**

Very good

Good

Moderate

Bad

Very bad

Don't know/No answer

### **Confidence in José Luis Rodríguez Zapatero**

High

Low/none

Don't know/No answer

### **Confidence in Mariano Rajoy**

High

Low/none

Don't know/No answer

### **Intention of voting PSOE**

Extreme left

Left

Centre left

Centre right

Right

Extreme right

Non-aligned

### **Intention of voting PP**

Extreme left

Left

Centre left

Centre right

Right

Extreme right

Non-aligned

### **Legislative activity**

Organic laws  
Laws  
Royal decree laws  
Royal decree legislation  
Bills  
Withdrawn  
Expiry of time-limit  
Rejected  
Approved with amendments  
Approved without amendments  
Questions answered by the President of the Govt. in Parliament  
Questions answered by the President of the Govt. in the Senate

*NB: The 'intention to vote' series has been modified from previous years. In early Reports on Spanish Democracy interviewees who did not know or did not answer this question were not included. From this Report (2010) onwards they will be included. For this reason the series has been reconstructed and the new percentages have been calculated.*

*Source: Centre de Investigaciones Sociológicas (CIS), Congreso de los Diputados (Parliament), and the Office of the President of the Government.*

## **Table 19**

### **Territorial disputes**

**Disputes brought by the State**      Appeals of unconstitutionality  
Disputes over areas of competence

**Disputes brought by the Reg. authorities**  
Appeals of unconstitutionality  
Disputes over areas of competence

**Action taken to reduce conflict**

Bi-lateral cooperation commissions  
prior to appeal lodged with the State

Bi-lateral cooperation commissions  
prior to appeal lodged with the regional  
authorities

Letters of cooperation

Meetings of the *Comisión de  
Seguimiento de las Disposiciones y  
Actos de las CC AA*

Regional laws scrutinised by the  
Comisión de Seguimiento

**Disputes brought before the Constitutional Court (TC) against the regional authorities**

Disputes

Appeals

Appeals abandoned

TC delivered judgement

Awaiting TC judgement

**Disputes brought before the Constitutional Court (TC) against the Central State**

Disputes

Appeals

Appeals abandoned

TC delivered judgement

Awaiting TC judgement

*Source: Ministry of Public Administration*

## **Table 20**

### **Legal Indicators**

#### **No. of judges per 100,000 inhabitants**

##### **Demographic structure**

Women

Men

Average age

Average age: women

Average age: men

**Quality of Justice:** estimated duration of cases (months)

##### **Civil Jurisdiction**

Magistrates Court

Provincial Court

High Court of Justice

Supreme High Court

##### **Criminal Jurisdiction**

Courts of instruction

Criminal Court

Provincial Court

High Court of Justice

National Court

Supreme High Court

##### **Administrative Litigation**

Courts of Contention

High Court of Justice

National Court

Supreme High Court

**Social**

Social Court  
High Court of Justice  
National Court  
Supreme High Court

*Source: General Council of Judicial Power (CGPJ)*

**Table 21****Constitutional Court (TC)****Appeals of unconstitutionality****Appellant**

President of the Government  
Ombudsman  
Members of Parliament & Senators  
Regional governments

**Constitutional issues****Appellant**

Supreme High Court  
National Court  
Superior Courts of Justice/Regional Military Courts  
Provincial Courts  
Magistrates Courts  
Others

**Appeals to the Constitution****Disputes over jurisdiction****Appellant:**

State v.s Regional authority  
Regional Authority v.s the State

Regional authority v.s Regional Authority  
Disputes in defence of Regional Authority

**Matters resolved**

Disputes regarding unconstitutionality  
Questions of unconstitutionality  
Appeals to the Constitution  
Disputes over jurisdiction

*Source: Constitutional Court (TC)*

**Table 22**

**Public finance of confessional religions**

**Financing of the Catholic Church (in euro) \*\*\***

Total tax allocation  
Total received from the State  
Difference (Budget supplement)

**Other religious denominations (in euro)**

**Financing of federation structures**

Spanish Federation of Evangelical bodies  
Spanish Islamic Commission  
Spanish Federation of Jewish Communities

**Financing of religious communities \*\***

Spanish Federation of Evangelical bodies  
Spanish Islamic Commission \*  
Spanish Federation of Jewish Communities

\*The Spanish Islamic Commission is a collegiate organisation associated with the Spanish Federation of Islamic Religious Bodies and the Union of Islamic Communities.

\*\*This Table reflects the sum received by each of the religions, and in brackets the number of communities receiving subsidies.

\*\*\*At the time of publication the official figures for the Catholic Church were unavailable. Since 2005 the figures correspond to the previous year, see: The Report of Spanish Democracy 2008.

*Source: Conferencia Episcopal Española and Fundación Pluralismo y Convivencia*

## **Table 23**

### **Socio-demographic indicators**

#### **Population**

##### **Foreigners\***

EU citizens

Non-EU citizens

#### **Civil marriages**

##### **Dissolved marriages (annulments, separations and divorces per 1,000 inhabitants)**

Inter-annual variation of dissolved marriages

Annulments

Separations

Divorces

#### **Abortions per 1,000 women, 15-44**

##### **Centres where abortion was performed (%)**

##### **Hospital**

Public

Private

**Non-hospital**

Public

Private

- EU countries between 2004 & 2006 numbered 25, and in 2007 were amplified by Rumania and Bulgaria.

*Source: Instituto Nacional de Estadística*