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Constitutions, Autonomies and the EU

Sia Spiliopoulou Åkermark (ed.)
Eduardo J. Ruiz Vieytez
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Sören Silverström
Susanne Eriksson
Roger Nordlund

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Editor:

Associate Professor Sia Spiliopoulou Åkermark, Director, The Åland Islands Peace Institute

The Authors:

Professor Eduardo J. Ruiz Vieytez, Institute of Human Rights, Deusto

Professor Iñigo Bullain, University of the Basque Country

Sören Silverström, Head of the EU department, the Government of Åland

Susanne Eriksson, Assistant Parliamentary Director, the Åland Parliament

Roger Nordlund, Head of the Government of Åland

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PB 85, AX-22101 Mariehamn, Åland, Finland
Phone +358 18 15570, fax +358 18 21026
peace@peace.ax www.peace.ax

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Preface

The European Union (EU) and EU law is in principle neutral towards the division of powers in the constitutional orders of Member States. However, as many of the contributions in the publication show, the EU has direct and indirect impact on the division of powers between the states and autonomous regions as well as on the workings and role of the parliaments and governments of autonomous regions possessing legislative competence.

While most studies until now have looked generally at the role of sub-state entities within the EU in the framework of what is usually referred to as multi-level governance, we have in the present report chosen to focus on two autonomous regions with legislative powers and longstanding and well-developed autonomy institutions. While the demography, the geography, the history and the political situation of the Åland Islands (Finland) and of the Basque Country (Spain) differ in many respects, there are many common issues with regard to the triangular relation *autonomous region – state – EU*. Spain acceded to the EEC already in 1986 while Finland first in 1995, but we see that even in Spain an agreement on the participation of the autonomous communities in the EU was reached first at the end of year 2004. The present report is the outcome of fruitful discussions at a seminar entitled 'Constitutions, Autonomies and the EU' held in Mariehamn (Åland, Finland) in October 2007. The two case studies are not compared systematically, but, rather, the report represents an inventory and analysis of the issues considered to be paramount by the experts from the two sides. These questions include mainly the constitutional development of autonomies within the EU, the participation of autonomous regions in the workings of European institutions, the role of the parliaments of autonomous regions in the implementation of EU law (what has been named passive and active Europeanisation) and the case law of the European Court of Justice with respect to autonomous regions.

The Åland Islands Peace Institute is grateful to the seminar participants and authors of this publication for their willingness to participate in discussions and for their timeliness in submitting the final manuscripts. We are also grateful to the Åland Parliament for letting us use its auditorium for the seminar.

Sia Spiliopoulou Åkermark
Associate Professor
Director, The Åland Islands Peace Institute

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The Evolution of Autonomy in the Basque Country – Experiences and Trends

Eduardo J. Ruiz Vieytez

Introduction

This paper intends to provide an overview of the evolution of the autonomy system in the Basque Country. With that aim, the paper will try to approach to the topic from both legal and political perspectives, showing lights and shadows on the dynamics occurred during the last 28 years. The substance of the paper will be divided into four parts. In part 1, we will try to locate the Basque autonomy in a wider context, taken for granted that the reader is not familiarised with the current legal and political framework of the Basque Country. In part 2 we will analyse the main aspects of the evolution of the autonomy in the last 28 years from a legal perspective, including the most relevant discussions about the interpretation of the Act on Autonomy and the obstacles for its amendment. Part 3 will be devoted to a political analysis of the evolution of autonomy, showing the main controversial aspects on the topic, through the position of the principal political parties and opinion polls. Finally, in part 4, we will try to draft some overall conclusions on the evolution of autonomy in the Basque Country and try to understand the possible future scenarios for the region.

The Context of the Current System of Autonomy

To evaluate the evolution during the last decades of the autonomy system in the Basque Country is a difficult task. This complexity is owed to several factors. On the one hand, the idea of autonomy is a complex one in itself. With the expression "autonomy" or "self-government" we use to make reference to very different models responding to very diverse political and legal realities. Even more, when we refer to political autonomy of sub national entities, the meaning of the expression may imply divergent consequences in different kinds of models, as we have already shown in previous studies.[1]

In the particular case of the Basque Country, to make an evaluation of the scope and effectiveness of the system of autonomy becomes even more complex, given the complicated circumstances of its reality. In fact, the Basque Country is nowadays a conflictive political reality, a singular case due to its uniqueness and complexity within the framework of Western Europe.

In the Basque case, even the personal and territorial concepts of the country are not peaceful. In sociological, linguistic or cultural terms, the Basque Country (as it is understood in generalist works such as the *Encyclopaedia Britannica* or *Wikipedia*) comprises different populations and territories in the Spanish and French States. Thus, while the Basque character of the lands on

the northern or French part of the country is not disputed, within the southern part, the belonging of Navarre to the Basque Country is largely opposed in Navarre itself and in the rest of Spain. The degree of affiliation of the Navarrese population with the Basque identity is extremely uneven and it does not correspond with their electoral performance. Nevertheless, Navarre constitutes an autonomous community in itself, although both the Spanish Constitution of and the Acts on Autonomy of the Basque Country and of Navarre foresee the possibility of integrating Navarre into the Basque Autonomous Community. However, at the present moment, the implementation of that possibility seems to be remote, given the correlation of political forces within the Navarre region. For clarity reasons, we will focus our analysis on an exclusive way on the Basque Autonomous Community, leaving aside the territorial debate on the relationship with Navarre or the French Basque Country.

In addition to these difficulties, the Basque Country is affected by a conflict situation including some violent expressions. The use of violence as a political instrument enjoys an extremely low support in the Basque society, but these violent expressions gravely affect not only the Basque political agenda, but also the Spanish one. The Basque society shows an important degree of ideological fragmentation, within a political party system corresponding to the polarised pluralism model. The political debate is linked to issues concerning sovereignty and right to self-determination, and the use of the idea of autonomy evolves according to this final debate on sovereignty. In fact, it can be said in advance that some political sectors that today appear to be defenders of the current autonomy system are different (and in some cases opposed) to those defending autonomy in the year 1979. In any case, we are talking about a society where the achievement of social or political agreements and consensus is particularly rare and difficult.

From a formal point of view, nowadays the Basque Autonomous Community (henceforth BAC) is one out of 17 Autonomous Communities of Spain, enjoying significant devolved powers and institutions, such as a democratically elected parliament in Vitoria-Gasteiz and a Basque government headed by the *Lehendakari,* who is responsible to the aforementioned parliament. Apart from that, the BAC, due to its particular history, is organised on a kind of a federal basis. Therefore, the three Historical Territories that make up today the BAC enjoy also devolved powers and have their own institutions, including democratically elected parliaments (*Juntas Generales/Batzar Nagusiak*) and their correspondent governments (*Diputaciones Forales/ Foru Aldundiak*). In fact, the BAC was the first Autonomous Community to be set up in 1979 after the approval of the Spanish Constitution of 1978. Since 1983, when the last Autonomous Communities were institutionalised, the whole territory of Spain (apart from the small cities in Africa of Ceuta and Melilla) is organised in autonomous communities. Although not all autonomous communities enjoy the same level of self-government, the tendency of the system is to homogenise the territorial landscape. In this respect, the Spanish model has more in common with the Italian one (although there is no clear division between special and ordinary autonomies) or the moderate federal systems like Austria, than with the asymmetrical autonomy models of Finland, Denmark or United Kingdom.

However, it must also be clarified that the BAC is probably the most peculiar Autonomous Community within the whole Spanish Kingdom. This is due to some relevant specificities including:

Like other autonomous communities (Catalonia, Galicia, Valencia and Baleares), the BA>C has recognised its traditional language (*euskera*) not only as an official language (together with the Castilian Spanish entrenchedin the Con-

stitution) but also as the "autochthonous" language of the BAC. This linguistic recognition, which entails some specificity in terms of powers and regulations, is not present in the majority of Spanish Autonomous Communities.

The BAC, together with Navarre, enjoys an independent system of financing of its institutions and powers. Following the historical conventions, both communities are largely responsible for their own tax policy and management (in co-ordination with that of the State and the European Union). They also ensure a fix part of the annual revenue for the central government in order to pay for the State powers exerted within their territories. However, the main bulk of the tax income (more than 90%) remains within the Autonomous Community.

According to the first additional provision of the Spanish Constitution, the Basque territories (including Navarre) are recognised as enjoying historical rights that are updated within the autonomy system. This has meant in practice a higher level of powers for these two communities than for the remaining 15. The main expression of this historical legacy is that of the tax policy, but some other powers such as the internal security or some aspects in educational matters have been considered also as expressions of the historical rights of the Basque Provinces.

The BAC is one of the 6 autonomous communities having a specific civil law (*Derecho foral*), which in the case of the BAC is applied only to some part of the territory and not to the whole population.[2]

Finally, unlike the rest of the Autonomous communities, the BAC shows a very specific territorial organisation. As we referred before, historical territories or provinces are really autonomous entities within the BAC. They develop independent policies in different important matters, and have provincial parliaments lo legislate in such topics, although according to the Spanish constitutional law, only the Basque parliament is able to create legislation with the highest legal rank. This important aspect of the internal organization of the BAC is also present in the peculiar composition of the Basque Parliament. According to Article 26 of the Act on Autonomy the Basque Parliament must be composed by the same number of representatives of the different historical territories, regardless of their population. This means in practice, that the three territories elect today 25 members of parliament (MPs) out of a total of 75 MPs, in spite of the 5 to 1 difference between Biscay and Alava in terms of population. This is in fact a rather surprising element for an elected parliament and may find its explanation in a vague idea of an internal federal structure, which, however, does not correspond to the real functioning of the system today.

Evolution: From a Legal Perspective

The Act on Autonomy for the Basque Country[3] is formally speaking an organic law, according to article 81 of the Spanish Constitution. It was the first act on autonomy approved by the Spanish parliament since the entry into force of the 1978 Constitution. The legislative procedure for the adoption of such an act ("Statute" according to the Spanish legal terminology) is a complex one, in which two different wills must merge: the one of the State, expressed through the central parliament, and the one of the people of the Autonomous Community, expressed in a first stage through its elected MPs, and in a final stage by the people itself via referendum.[4]

According to this complex process of approving, amendments to the Basque Statue must be done in conformity to the regulations estab¨lished in it (articles 46 and 47). In substance, this process consists of three consecutive steps: debate and approval in the Basque parliament; debate and approval as organic law by the

central parliament; approval of the citizens of the BAC by referendum. As it can be seen, again the process of amendment is based on the junction of the same two political wills, the one of the state and the one of the Autonomous Community, giving in this way to any of these two parts the formal possibility of vetoing any proposal of modification in the system in force.

In fact, for the last 28 years there has only been a serious attempt to amend the Basque Statute. This attempt was leaded by the Basque Government by sending in 2003 a bill to the Basque Parliament to reform the whole Statute, which in fact constituted a deep and radical reform of the existing autonomy system. This bill[5] was discussed within the Basque Parliament for around a year and finally approved by absolute majority in December 2004.[6] However, on the second step of the process, the Spanish Parliament received the proposal, and the First Chamber refused to open the process of discussion in a preliminary debate.[7] Therefore, the whole proposal was rejected and lost any legal force. Unlike in the Basque case, most Autonomous Communities of Spain have already amended their respective statutes, including those acceding to autonomy in the first years of the constitutional system, and so far no other proposal of amendment has been rejected in the preliminary phase of the parliamentary debate.

In legal terms, the Statute specifies the rank of powers that correspond to the Autonomous Community according to the stipulations of articles 148 and 149 of the Constitution and, in the case of the Basque Country, also to additional provision number 1. Following these regulations, the act on autonomy was drafted with the clear political intention of assuming for the BAC the highest possible level of autonomy and powers within this framework. It was necessary that this be made explicit in the draft, since the Constitution foresees that the remaining powers will correspond to the State, unlike in a federal system. This explains that the 1979 Statute, still in force, includes a long list of "exclusive" powers for the BAC and other legislative and executive powers in other matters in which basic legislation is reserved to the State.

However, the implementation of these stipulations during the first 15 years of autonomy has shown many differences in the interpretation of the content of the Statutes of the autonomous communities (including the Basque) and new scenarios that could not have been foreseen in 1979. Thus, defenders of higher autonomy claim that the State has enlarged its competences through extensive basic regulations in specific matters or via the so called horizontal titles, which give to the State the possibility of invading fields which were supposed to be of the exclusive of the BAC (and other autonomous communities)[8]. The paradigm of these horizontal titles is the one reserved to the State in article 149.1.13 of the Constitution, which gives to the central institution the power on "the basic aspects and coordination of the planning of the economic activity". It is easy to understand that such a generic concept can be used to legitimise a broad rank of State interventions via formal legislation or even ordinary regulations, affecting the substance of sectorial powers of the autonomous communities. Besides this, it is an extended opinion that the work done by the Constitutional Court (whose members are elected only by the central institutions and not by the autonomous communities) when interpreting the particular conflicts in this respect has been uneven in favour of the state positions.[9] All this has pushed many politicians (and scholars) to claim that in practice the BAC has no exclusive powers, regardless the wording of the statute. A new threat of invasion of regional powers appears in recent times with the practice of the central government of invoking a kind of a "spending power" by which the state can finance concrete policies even in fields falling within the

powers of the Autonomous Communities (such as promoting access to housing or the helps for supporting families, fields in which the Autonomous Communities are already active).

In addition to these debates, it must also be considered that the formal structure of the Spanish state does not correspond to the traditional model of a federal state. This is particularly important in aspects such as the participation of the autonomous communities in the construction of the state will or in external representation. In principle, autonomous communities are excluded from the composition of the central constitutional institutions. Only the Senate shows a somewhat and obviously outdated territorial basis, which in fact is not effective given the reduced significance of the second chamber within the current system. There is an almost total unanimity among all kind of actors on the need of deeply reforming the Senate, but so far no serious proposal has been formulated. In the field of the external representation, the State has traditionally invoked its exclusive power in international relations, but in the last years some other possibilities have appeared thanks to some specific statements of the constitutional court[10] and new developments in respect to the representation of Autonomies' interests within the Spanish delegations before the European Union.[11]

In parallel to these factors, one must also take into account the original territorial structure of the BAC in comparison with other autonomous communities. From a legal point of view, the historical territories or provinces have the power to pass legislation on certain matters. However, although the democratic legitimacy of these regulations is similar to that of the Autonomous Communities' acts, their legal rank cannot be equal to formal laws according to the Spanish constitutional framework. Thus, provincial laws cannot be challenged before the constitutional court, but they can be challenged before ordinary courts, like development regulations. This creates in practice the problem of "de-legalization" in those areas in which provinces have full competence, such as tax law and others. An important consequence of this is that judicial review of these provincial laws can be demanded by any institution or person (unlike in the case of formal acts), and a great effort of coordination between Basque and provincial institutions is required to satisfy standards from the State or the European Union bodies.[12]

To put it in a nutshell, the main concern today about the Basque Statute from a legal perspective is the feeling by some Basque institutions and political parties that the significance and content of the Statute approved in 1979 has been limited in different ways in these 28 years since its adoption. This is considered by some sectors even as a legal violation of the Statute itself, while others (some of them not being very enthusiastic with the Statute in 1979) now use the Statute as the main hallmark to be defended. Paradoxically, unlike in other (most of the) Autonomous Communities, which have already amended their statutes, some of the clauses of the Basque Statute haven not been yet implemented, like the transfer of employment policies, administration of penitentiaries in the BAC or economic management of the Social Security. Even more, some of the powers to be devolved to the BAC are explicitly denied by the central government (as it happens with the transfer on the power on penitentiary establishments, included in article 12.1 of the Statute, that was again refused by the president of the government in the last political debate in June). In any case, legal disputes about the interpretation of the Act on Autonomy or, in case, about the proceeding to amend the Statute must be submitted to the Constitutional Court, which is seen by some actors and parties as non-impartial. All this entails a quasi-permanent blockade of the legal framework of the autonomy, which is deeply linked to the political conflict that characterises the Basque reality.

Evolution: The Political Perspective

As we already explained, the Basque society is highly fragmented from a political perspective. As for the main political parties, which are present in the BAC, we can distinguish those in favour of Basque sovereignty (e.g. right to self-determination) and those Spanish political parties opposed to such an idea. Among the first group, the oldest and main political party is PNV or Basque Nationalist Party. EA ("Basque Solidarity"), *Aralar* (the proper name of a Basque mountain) or EB ("United Left") are smaller left-wing parties popping around the same idea of sovereignty. Finally, *Batasuna* ("Unity") was banned in 2003 for acting as a political branch of ETA, but new formations with different names take over its representation in different institutions (EHAK in the Basque Parliament). On the other side, the two main Spanish political parties, PSOE (socialist) and PP (conservative) represent the "unionist" political spectrum in the BAC.

Electoral behaviour of the Basques hardly changes from one election to another, although the scope of the election (general, Basque, local) is a conditioning factor. Since 1980, when the first regional elections were held, pro-sovereign political parties have obtained the absolute majority in all elections to the Basque Parliament (1980, 1984, 1986, 1990, 1994, 1998, 2001 and 2005). PNV or Basque Nationalist Party has always been the first political force in terms of votes, and a PNV president has headed all governments so far. Apart from 6 years of exclusive PNV governments, different coalitions of PNV with PSOE, EA or EB have been in office for longer or shorter periods.

After the last election in year 2005, the composition of the Basque Parliament in number of seats is like follows:

PNV	22 seats (pro-sovereignty)
PSOE	18 seats (centralistic)
PP	15 seats (centralistic)
EHAK	9 seats (pro-sovereignty/ pro-independence)
EA	7 seats (pro-sovereignty/ pro-independence)
EB	3 seats (pro-sovereignty)
Aralar	1 seat (pro-sovereignty/ pro-independence)

The current government is composed by PNV, EA and EB with a total amount of 32 seats out of 75. All pro-sovereignty parties[13] sum up a total of 42 MPs (of which theoretically 17 pro-independence), while Spanish parties hold 33 seats.

The debate on autonomy or about the Statute, is linked to the political debate on sovereignty or self-determination. To make it more difficult, this controversy about the subject enjoying the last word in political terms is contaminated by the use of violence by ETA. This terrorist organisation claims to defend Basque sovereignty through armed struggle. Although popular support for the use of violence is almost marginal, its actions and the threat of violence becomes part of the debate. The other way round, the debate on self-determination becomes very often linked to the searching of peace.

In this difficult context, a growing debate on the future of autonomy has appeared over the last 10 years. The Basque oriented parties are either frustrated about the real possibilities of the current Statute or determined to gain formal recognition of the sovereignty. On the contrary, Spanish political parties like PSOE and PP are firmly attached to the current autonomy system as part of the Spanish constitutional structure. PSOE shows a more flexible attitude towards a moderate amendment of the Statute, but without taking into consideration any formal declaration of self-determination or symbolic issues

like specific international representation. From this perspective, it seems extremely difficult that both sides of parties can arrive to a common ground of political principles, since the Gordian knot of the "right to decide" constitutes the red line dividing both fields.

By looking at sociological surveys on these issues, we can see that also the Basque society as such is deeply divided on the final question about the model of relation with Spain. Basque oriented positions seem to represent the majority of the population of the BAC but, in any case, there is a significant opposition to such positions by a strong minority, and deep differences between the three territories. Thus, attitudes towards the possibility of Basque independence are quite balanced (30% agree, 35% disagree; 20% depending on the circumstances)[14], but the results by age, territory, origin or political sympathy show dramatic divergences. The same differences appear when people are asked about their vote on a hypothetical referendum on independence.[15]

As for the idea of self-determination, which is at the very centre of the Basque political agenda, the population seem to have a clear idea about its meaning. Thus, when people is asked about the meaning of such a concept, 64% of the respondents identify self-determination with the right to decide the political status of the country, while only 23% identifies it exclusively with independence.[16] This and other data suggest that Basque society does not show a clear majority in favour of independence, whereas is largely in favour of being asked via referendum about its political status. It seems that there is a will of a larger degree of autonomy and singularization (an asymmetrical institutionalization) of the Basque community, without breaking definitively the formal relation with the Spanish State.

This position, which can represent a kind of a common ground within the BAC's society, has to face, however, two important obstacles when looking for implementation. One refers to the existing level of autonomy and the other has to do more with the incardination of the Basque autonomy within the Spanish general framework.

The first problem is a consequence of the current system of autonomy. In fact, the level of self-government enjoyed today by the BAC is relatively high in comparison with other autonomous regions in Europe. Legally speaking, it cannot be denied that Basque autonomy is one of the most substantial models of decentralisation that are usually found in complex States, although many disputes arise when implementing the stipulations of the Statute (as we already explained in the previous chapter). The Basque autonomy even includes today a large self-government in tax matters that in some way ensure its financial sustainability. Thus, any reform of the current system in order to increase the level of self-government must be built on rather sensitive areas for the State. Either we try to find a substantial set of new competences or powers for the Autonomous Community (which in fact could mean the "emptiness" of the State" within the Basque Country, an idea that would be fiercely rejected by the Spanish oriented sectors), or we go into symbolic elements, trying to emphasize the recognition of a separate identity (for instance, recognising a different nationality, or allowing a separate international representation in cultural or sport events). And this second way of satisfying demands of a higher level of autonomy seems also to be totally unacceptable from the State perspective.[17] The conclusion is that there seems to be little scope for satisfying the growing demands of self-government without upsetting the "unionist" positions.

The second problem is partially linked to the previous one, but we identify it better from the general perspective. In fact, it refers to the never-ending debate on the territorial structure of the State, which in practice is on my opinion a question of symmetry and asymmetry. Unlike the Italian Constitution, the 1978 Constitution es-

tablishes in this point a very broad and open system. Thus, the initial constitutional agreement (in which Basque nationalists did not participate) was possible thanks to the different readings of an ambiguous text. In a first period of the evolution of autonomies in Spain some autonomous communities were in fact more powerful than others, according to different proceedings.[18] However, since the first wave of reforms of Statutes in the early nineties, it is rather clear that the evolution of the whole system is towards a homogeneous framework for all autonomous communities.[19]

The idea of a final symmetrical model was challenged not only by the proposal of amendment of the Basque Statute in 2004, but also by the bill on a new Act on autonomy for Catalonia, passed by the Catalan parliament in 2005.[20] The negotiation of this new Statute for Catalonia, and the dramatic changes that were introduced in the original proposal by the central parliament, show that the possibility of creating a formally asymmetrical model is not possible in Spain. The consecutive reforms of the Statutes of Baleares, Valencia and, above all, Andalusia, showed that any further step in regard to one region will be followed by others in an attempt to neutralise the any kind of special status for any of the regions. In a more clear way, the idea of reforming the Constitution and recognising the idea of Spain as a plurinational State was totally defeated in that debate. Therefore, the demand for a formal recognition of singularity, which is present at least in Catalan and Basque societies, is largely opposed in the rest of the country. The Spanish majority tends to identify asymmetry with privilege or with national division and does not consider Spain to be a plurinational State, putting all autonomous communities in the same political level (what in Spanish is called *"café para todos" "coffee for everybody*-). The reform of the constitutional structures can only be successful from the equalitarian and symmetrical perspective, and this political will clashes with the possibility of accommodating Basque or Catalan (maybe also Galician) specific identities and political demands. The conflict is to be present in the long-term, since the territorial model is one of the main resources of the political agenda for the two dominant parties.

Evaluation of Autonomy and Possible Future Scenarios

According to a survey delivered by the Basque Government with occasion of the 25 years of the Statute, an overwhelming majority of the Basque citizens expressed a positive outcome of the autonomy. Positive opinions rose up to 65%, whereas negative perceptions supposed only 7% of all responses. This positive evaluation was supported in the three provinces, and in all age segments. Left wing and pro-sovereign people showed a more positive attitude than those of right-wing and centralistic opinions, although the positive response was dominant in all groups. The most enthusiastic responses were those from the sympathizers of the political parties at office in the Basque Government, while the less positive responses were given by voters of the Popular Party, whose positions severely differed, once again, from those of the rest of the electorate.[21]

The Basque citizens seem to evaluate in very positive terms the achievements of the Basque autonomous institutions in fields like public health, Basque language, education, culture, public works and social welfare. When asked about the institutions that have contributed to the development in the last 25 years, Basque citizens show a clear option in favour of autonomous institutions such as the Basque Government (by far the most appreciated one with a 56% of responses), the municipalities and the provincial

governments (35% and 34% of mentions). On the contrary, both the State government and the European Union are hardly considered (11% and 7% respectively). All this shows that the Basque society clearly links self-government with social, cultural and economic developments.[22]

From this perspective, it could seem that the current system of autonomy is highly appreciated among the Basque citizens. However, at the same time, the Basque society claims higher levels of self-government, as we already explained, and a different system of relation with the State, demanding the recognition (maybe the exercise) of the right to self-determination. Thus, in the same survey, a 64% of the citizens of the BAC agree with the idea of the Basque Country being a different people with its own identity, and 61% of those answering expressly agreed with the right to self-determination (another 20% showed its disconformities with such an idea).[23] In concordance with this, a clear majority of the population showed agreement with the proposal of a new Statute passed by the Basque Parliament and rejected by the central parliament in 2005.

In this respect, it looks that the Basque society is happy of having enjoyed a significant degree of autonomy for the first 25 years. But at the same time, either the current system of autonomy is not perceived as sufficient, or the success of it has pushed further demands of increasing the level of self-government, including recognition of the right to decide. It is also true that there is a significant minority within the Basque society that shows a fierce opposition to weaken the links with the rest of the state and rejects any debate about self-determination. The relevant point in this picture is that a large majority of the Spanish society shares the position of this latter minority and can only be ready to admit higher levels of autonomy (never self-determination) in the case that the new devolved powers are distributed to all autonomous communities or they have no external symbolic value.

Looking from a global perspective, it must be recognised that the system of autonomies in Spain, although showing some shadows, constitute the most important effort of the new constitutional period after 1978. It can be considered in general as a successful experiment in respect to the combination of the regional and national identities, and a way of approaching the administration to the citizens in all the country. However, in respect to the majority of the Catalan and Basque societies (and a minority in the case of Galicia), the overall evaluation of autonomy cannot be so enthusiastic. In fact, after more than 25 years of self-government, in these two societies a significant degree of political frustration is still present. The initial expectations about the Statutes of autonomy have been diminished by the legal and political evolution of the system, and the incapacity of the state to recognise its plurinational being.

Nevertheless, these two cases are not identical. In the case of Catalonia, the process of reforming the Statute, developed between 2004 and 2006 has meant another step forward, even if the initial text approved by the Catalan parliament was largely reshaped by the central parliament and dramatically downgraded both in symbolic aspects and in terms of powers. However, the political climate of Catalonia is not that of social fragmentation and the distances between the different ideologies are not deep enough to avoid a coalition government composed by the Catalan branch of PSOE, ecosocialists and a left-wing pro independence party. Unlike in the Basque Country, the debate on the economic benefits or costs of autonomy is also an important issue in Catalonia and it seems that there is still a way to go in the negotiations between Catalonia and the State in this important aspect.

On the contrary, in the case of the Basque Country, it has been so far impossible to amend the act on autonomy in force since 1979. The level of political agreement on substantial issues

is rather low, since the red line dividing those parties in favour or against Basque sovereignty (right to decide or self-determination) seems to establish a growing ideological fence. The level of consensus of the Statute in 1979 would be now impossible to be achieved, even around the same text. Those who saw the Statute as a first step in the way to sovereignty claim that it has not even completed yet, and nowadays the defence of the statute is linked to that of the constitution. Paradoxically, those institutions created by that statute have already proclaimed it outdated, but some (?) step forward has not been even considered as legitimate by the state institutions and the unionist political parties. Even more, unlike in Catalonia, the debate on economic matters is not a resource, since the system of "*Concierto*", specific of the Basque Country and Navarre, guarantees a significant level of self-sufficiency for the BAC. This means that a new economic deal cannot be an instrument to secure a new consensus for the next 25 years.

What in practice has been happening for the last three years is a kind of veto of the central political parties to any initiative of amending the autonomy system by those who are demanding more self-government, this is to say the pro-sovereign parties that make a majority within the Basque institutions. As the political and institutional situation of the Basque Country is rather important for the attitude of the two big parties in the whole Spain, Basque politics is to some extent kidnapped by a double factor: on the one hand by the extreme social sensitivity of the Spaniards ins respect of asymmetry or the territorial debates; on the other hand, by the persistence of the violent actions of ETA, claiming the denial of sovereignty by the State as the main argument to go on with the armed struggle.

In this complex panorama, the most likely situation is that of the quasi-permanent blockade of the legal system. This would prolong the frustration of those sectors demanding more autonomy and specific recognition, and at the same time, although satisfying the positions of those defending the status quo does not ensure it forever.

Autonomy can be considered as a successful experiment for a first stage, but the problem arises once this first period of 25 years is over. From a managerial point of view the positive evaluation of autonomy is clear, but from the perspective of satisfying the demands of the pro-Basque oriented sector of the society is a failure. As for being an adequate tool to integrate this sector into the Spanish State, it has also been a failure, and probably it will keep like this until there is a formal and material recognition of the national plurality of the Spanish State, something which is far from becoming real in a medium term.

There are still two other possible scenarios when looking to the current political situation concerning autonomy in the Basque Country. In the first one, some parties would reach to a significant level of consensus to amend the current statute. This would entail in any case an agreement between the so called "moderate" nationalist parties (above all the PNV) and the PSOE which, at the same time, should be in office in Madrid to be able to give the way in the central parliament regardless the position of the Popular Party. This sort of agreement seems very difficult today, given the position of those parties in respect to the Gordian knot of self-government/self-determination. But even in the case that such an agreement happened (which it is not so difficult if PNV went for a government axis with PSOE, including probably EB), the result would be a much lower level of political consensus than the one produced in 1979, since it would be quite possible that PP on the one hand and *Batasuna, Aralar* and EA, on the other hand would not be happy with the content of such a deal. In that scenario, the involved parties should opt between going on with the reform even if consensus is lower than in 1979 or waiting again

in the long-term for the end of the blockade.

The second scenario would be that of a pro-sovereignty development. In case that the social majority in favour of self-determination is organised around a clear political project, after a period of political blockade of any initiative, the Basque-oriented parties could present a proposal of negotiating with the state a new deal. The initiative would be fiercely opposed not only by the unionist parties, but also by all central institutions and most of the mass media. However, being the pro-sovereign parties unified around a common strategy, the political scenario could walk in the same direction of that of Quebec. Nevertheless, this option presents also many difficulties. On the one hand, the PNV should clarify its traditional ambiguous position on the final aim of the party and this could have a cost in the short-term that would be difficult to assume for the party leaders. Second, for such a hypothesis, ETA should put a definitive end to violence. Although this condition is not strictly necessary, in political terms it would be necessary to gather all the possible supports for the idea of sovereignty, especially looking to a (probably illegal) referendum. In that respect, collaboration among parties would only be possible if violence is clearly out of the way. Finally, the main strength of this possible scenario would not be other than the popular support to such an initiative. Although a third of the population would certainly be in favour of a process of confrontation with the State, the crucial second third would probably opt depending on the circumstances and attitude of the different political and social actors. In this case, the debate would not be any longer on the traditional concept of autonomy, but on a kind of association deal that would for sure entail the recognition by the State (and by the Spanish society) of an asymmetrical system, something that appears very difficult in the current situation.

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Notes

1. RUIZ VIEYTEZ, Eduardo J. and KALLONEN, Markko (2004), "Territorial Autonomy and European National Minorities: South Tyrol, the Basque Country and the Aland Islands", European Yearbook of Minority Issues, vol. 2, 2002/3, ECMI-Eurac Research, Martinus Nijhoff publishers, Leiden-Boston, pp. 247-281. Also, ETXEBERRIA MAULEON, Xabier; GOMEZ ISA, Felipe; RUIZ VIEYTEZ, Eduardo J.; VICENTE TORRADO, Trinidad L. and ZUBERO BEASKOETXEA, Imanol (2002), Derecho de autodeterminación y realidad vasca (Right to self-determination and Basque reality), Basque Government, Vitoria-Gasteiz, pp. 193-265.
2. In the particular case of the Basque Country, as a general rule, specific civil law applies to people living in a rural environment, whereas urban population follow the common Civil Code. Nevertheless, the territorial scope of application of the common or specific civil law is complex due to historical reasons. The main differences between the Spanish common civil law and the Basque civil law refer to issues like inheritance rules and economic stipulations of marriages.
3. Organic Law 3/1979, of December 18th. Full text in English at http://www.nuevoestatutodeeuskadi.net/docs/state_of_autonomy.pdf
4. The referendum on the Basque Statute was held on 25 October 1979. More than 90% of those voting did it in favour, being more than 50% of the census.
5. See full text in English at http://www.nuevoestatutodeeuskadi.net/docs/dictamencomision20122004_eng.pdf
6. Basque oriented parties like PNV, EA and EBvoted in favour of the draft Statute of Autonomy, whereas the two main Spanish parties (PSOE and PP) opposed it. Batasuna strategically decided to split its 6 votes: 3 of them supported the proposal and three opposed it. As a result of this, 39 votes were in favour (being 38 absolute majority) and 35 against. See next chapter for identifying the different political parties.
7. Through the preliminary debate that is compulsory for all legislative initiatives not coming from the government. It is called as "toma en consideración" (taking into consideration). Both PSOE and PP voted to reject the project, whereas the Basque, Catalan and Galician parties voted in favour of its consideration by the parliament.
8. ALVAREZ CONDE, Enrique (2005), Curso de Derecho Constitucional, vol. II, 5th ed., Tecnos, Madrid, p. 561-563.
9. The website of the Spanish Constitutional Court is http://www.traibunalconstitucional.es. Unfortunately, the web is accessible exclusively through the Spanish language and there is no information provided in English or in other languages of Spain.
10. In particular, it is relevant the 165/1994 judgement of the Constitutional Court, of 25 May 1994, stating that the permanent representation office of the Basque Autonomous Community in Brussels is not in itself a violation of the exclusive power of the State on international relations.
11. See the 9 December 2004 Agreement on the participation of the Autonomous Communities in the formations of the Council of the European Union. Full text (only in Spanish) at http://www.map.es/documentacion/politica_autonomica/cooperacion¬autonomica/asuntos_europeos
12. On the recent concerns about the distribution of powers between the Basque common institutions and the Historical Territories, see COBREROS MENDAZONA, Edorta (2006), "La modificación expresa de la Ley de Territorios Históricos como requisito para reducir las competencias de los órganos forales", Revista Vasca de Administración Pública, no. 75, p. 49-80.
13. This concept would include in the Basque Country all those parties in favour of the right to self-determination. Some of them show a pro-independence ideology (Batasuna, Aralar and EA) and others defend federalist solutions (EB) or some kind of free as-

sociation system (PNV).

14. Previous surveys give quite similar results. These figures come from the "Sociometro vasco" no 33, march 2007, published by the Basque Government.
15. See different data provided by the Basque Government studies' cabinet at http://www1.euskadi.net/estudios_sociologicos/sociometros_c.apl; The University of the Basque Country has also a periodical survey about political opinion in the Basque society, known as "Euskobarómetro", available at http://www.ehu.es/cpvweb/pags_directas/euskobarometroFR.html
16. Sociometro vasco no 34, June 2007.
17. It is interesting in this sense the debate on the possibility of official recognition to Basque or Catalan football national teams (an idea clearly supported in the respective autonomous communities) and the closed opposition to that idea from the Spanish perspective in the rest of the country.
18. On this process, see RUIZ VIEYTEZ, Eduardo J. (2004), "Federalism, Subnational Constitutional Arrangements, and the Protection of Minorities in Spain", en Alan TARR, Robert WILLIAMS y Josef MARKO (eds.), Federalism, Subnational constitutions and Minority Rights, Praeger, westport-Connecticut-London, pp. 133-153.
19. ARAGON REYES, Manuel (2007) "La organización institucional de las Comunidades autónomas ", Revista Española de Derecho Constitucional, no 79, p. 9-32. Opposing, ALBERTI ROVIRA, Enoch (2006) "Las reformas territoriales en Alemania y en España y la sostenibilidad del paradigma autonómico español", Revista Española de Derecho Constitucional, no 78, p. 9-42.
20. On this new act on autonomy and its political background, see an outline at RUIZ VIEYTEZ, Eduardo J. (2007), "The New Act on Autonomy of Catalonia", European Yearbook of Minority Issues, vol. 5, 2005/6, ECMI-Eurac Research, Martinus Nijhoff publishers, Leiden-Boston, pp. 503-509.
21. Sociometro vasco, Special issue "Valoration of the 25 years of self-government and the proposal of a new Statute", March 2005, p. 10.
22. See, Sociometro vasco,, Special issue… cit., p. 20.
23. See, Sociometro vasco,, Special issue… cit., p. 40.

Role and Prospects of the Spanish Self-Governing Communities in European Matters and Institutions.

Iñigo Bullain

Introduction: Some Preliminary Considerations

The Spanish constitution of 1978 does not contain a single reference to the European Union. Only in art. 93 does it mention that "authorisation may be granted by an organic act to conclude treaties by which powers derived from the Constitution shall be transferred to an international organisation or institution. It is incumbent upon the Cortes Generales or the Government, as the case may be, to ensure compliance with these treaties and with resolutions originating in the international and supranational organisations to which such powers have been so transferred". The mention of "supranational organisations" is the only indirect reference to the process of integration or to the EU institutions in the Spanish constitutional text. Most of the statutes of autonomy which were drafted between 1979 and 1982 contain no references to the then European (Economic) Community. One can observe in the constituents while drafting the Constitution as well as in the regional elites responsible for the autonomy processes and the statutory textes an evident *European blindness*. Or at the very least, with the exception of the new Statute of Catalonia, a European myopia has been maintained for the more than 30 years from the accession up until the present day.

At the end of the 1970s, Spain embarked upon the transformation of a long lasting national-catholic dictatorship, a regime inspired in form by the Mussolinian fascist corporate State, into a European parliamentary democracy. The 40 year isolation that accompanied franquism resulted in a detachment from the model of State developing in Europe after World War II, as well as from the supranational process of European integration. In fact, as is reflected in the text of the Constitution of 1978, the European perspective is utterly absent. However, the accession of Spain to the EEC only 8 years later (1986) was not accompanied by any constitutional reform, and the successive reforms of the European treaties (European Act, Treaty of European Union, Amsterdam or Nice) did not merit constitutional reform either. Nor were the statutes of any of the Self-Governing Communities reformed in order to take account of the important effects that the development of the integration process was having on the competences of the Autonomous Communities.

In fact, the successive and constant attribution of new powers to the EU has been made at the cost of State powers, which, in those member States with a regional structure, as Spain, are frequently powers previously enjoyed by the regional institutions. Central institutions can compensate for the loss of their powers through their keystone position in the European Community's decision-making structure, sharing with

other member States the decisions upon matters subject to European power. Self-Governing Communities, on the other hand, are involved in a sort of "zero-sum game". Although the transferred powers are matters of regional, as well as State, competence, regional institutions do not have adequate instruments for participation and representation at the European level. On behalf of the member States, central powers have procured almost monopolistic rights of participation and representation, so that regions tend to become weaker as the European process develops. It is not just that the executives of the Self-Governing Communities have lost the capacity to take decisions over matters of their competence, according to the distribution of powers established by the Constitution and the Statutes of Autonomy, but in addition to that, the loss of powers is particularly severe for Autonomous Parliaments, which have been stripped of legislative powers to the benefit of European institutions and bodies of the Central Power of the State. Both European institutions and central administrations take advantage of the transfer of powers to Europe in order to reduce regional powers and recover decision-making power over matters of regional competence, thus damaging the autonomy internally attributed to the Self-Governing Communities.

However, the effect of continuous loss of autonomy is not experienced to the same extent by all of the Self-Governing Communities. For some, in particular for the Basque Country and Catalonia, their marginalisation in Europe is the reflection of a particular problem. Europe is not perceived in the same way by two different populations of which one is experiencing a conflict of national identities and the other is not. Neither is the European dimension viewed equally if one of the regional languages, like Catalan or Basque, is ignored at the European level, not that they have yet obtained recognition in the central institutions of the Spanish State.[1] In addition to all that, in the Basque Country, as well as a national political conflict, there exists a terrorist organisation promoting violence and whose Marxist ideology is at odds with the liberal and parliamentary model that characterises the process of European integration.[2]

In addition to the previously mentioned European blindness there are other factors that explain the position of the Self-Governing Communities in relation to the process of European integration. An important factor in this regard is the influence of political parties upon the regional structures. One can say that the political influence placed upon the regional parties is stronger than the one that flows from the regional institutions themselves. There are several reasons for this. On the one hand, because Self-Governing Communities are a novelty for most of the territory and the population. Only Catalonia and the Basque Country had previously experienced autonomy during the twentieth century, before dictatorship ended it abruptly. On the other hand, because the regional structure is not accompanied by representation and participation of the Self-Governing Communities in the management of the Central Power of the State.

In contrast to what happens in some federal States such as Austria or Germany, where the Länder have a State institution - the Senate or Bundesrat - to represent them and to make them participants in the management of the State, as well as in taking decisions on European matters, in Spain it is not so. The Self-Governing Communities are internally and externally marginalised from participating in State decisions. For the regions, participation in the running of the State depends on the functioning of the so called Sectorial Conferences (Conferencias Sectoriales). These are administrative units which bring together representatives of the central and regional administrations to try to procure joint positions among regions in matters of their power and to agree them with the central

administration. This form of thematic forum is also employed for matters related to regional and European power: the so called Sectorial Conference for European Affairs. But the functioning of this kind of administrative body, when it functions, is simply random. Because the main factor in its functioning is the will of the two main political parties which dominate most of the regions. So it is that most frequently the positions taken by the regions are decided in extra-regional forums (the headquarters of the popular and socialist parties in Madrid), and if one of the two parties is running the central government, the other party will run the regions under its control as an instrument of opposition.

In the following pages we will try to analyse the role and prospects of Self-Governing Communities in European matters and institutions, with reference to other Self-Governing regions of the European Union.

Participation of the Self-Governing Communities in European Affairs

Concerning regional participation in European affairs, it is possible to distinguish two periods. The first lasted from the incorporation of the State to the EEC in 1986 until the accords of 2004, and the second has been running since then.

1986-2004.

Until recently[3], Self-Governing Communities were entirely marginalised from European affairs. Even today, twenty years after the incorporation into Europe they do not have a constitutional recognition of information, participation or representation rights in European affairs. One can see that through the process of European integration many of the regional powers have been transferred into the hands of the central administration. This has been accompanied by silence and indifference from many of the regions. The method used to manage European matters, the so called CARCE (Sectorial Conference for European Affairs) [4], as even the Central Administration admits, has been of no use for involving the Self-Governing Communities in the European decision-making process.[5] This failure has been denounced year after year by the notorious report "Informe sobre Comunidades Autónomas".[6]

During this first period the Self-Governing Communities were informed about EU matters in only a very non-systematic way, and they were scarcely able to take decisions among themselves.[7] In addition, the participation of the Self-Governing Communities was limited to certain committees of the European Commission.[8] In those committees the Self-Governing Communities had to operate without any clear criteria for developing their position. Besides, on many occasions, some of the committees became inactive or simply disappeared. Moreover, and in relation to the then so called regional counsellor in the Spanish Permanent Representation, one cannot properly say, on the basis of his powers or the functions attributed to him, that he was a representative of the regions. It is more accurate to describe him as a Spanish diplomat designated by the central administration to liaise with regional administrations in matters of European and regional power.

The accords of 9th December 2004[9]

The content of the accords[10] has permitted the Self-Governing Communities to participate in four of the nine different configurations of the Council of Ministers of the UE: 1) Agriculture and Fishing; 2) Environment; 3) Employment, Social Policy, Health and Consumers; 4) Education, Youth and Culture. Moreover, there is regional participation in the working groups of the Council and the COREPER. Thus, representa-

tives of the Self-Governing Communities will be able to participate as members of the Spanish delegation in meetings of the Council of Ministers (CMUE) according to a rotating six month system.[11] Additionally, two officials of the Self-Governing Communities will be members of the Permanent Representation, their mission being: to serve as a link between the offices of regional representation in Brussels and the rest of the members of the Spanish Permanent Representation; to facilitate the flow of European information to the Self-Governing Communities; to follow regional participation in the sectorial conferences; and to inform of negotiations in Brussels. The accords are not incompatible with the bilateral lines of participation that the central government could agree with some Self-Governing Communities, or with the maintenance of a special status for Ceuta and Melilla.[12]

The accords should be situated within the scope of a new framework for the autonomous regions, linked to the Conference of Regional Presidents, to the planned reform of the Senate, and to the process of reforming the Autonomy Statutes of the Self-Governing Communities.

Although there have been clear improvements compared with the previous situation, this remains an informal system which is dependent on the sensitivity of whoever is occupying the position of President of the Spanish central government.[13] Hence, in 2005 there were two meeting of the CARCE and four meetings of the coordinators. According to the conclusions of the Council of the European Union in July 2005, it is permissible to use regional languages in the Council, the Committee of the Regions (CoR) and the European Commission as long as prior notice is given in order to make arrangements for the necessary translation, and the costs are absorbed by Spain. Interventions have already been made at the CoR in Basque, Catalan and Valencian, and also in Catalan at an EU Competitiveness Council. It is also anticipated that there will be translations into the regional languages of the body of community legislation included in EUR-Lex. In 2005, representatives of the autonomous regions participated on 23 occasions in meetings of the Council of the European Union.[14] As for COREPER, (Committee of the Permanent Representatives) the two autonomous region councillors [in REPRE] – currently officials from Andalucia and Galicia – attended nine meetings and passed on details of the proceedings to the Spanish ministry of public administration. Representatives of the autonomous regions participated on 103 occasions in meetings of Council workgroups, primarily through members of the respective offices of the autonomous regions in Brussels.[15]

On the other hand, there has been a pilot test of a rapid alert mechanism to check/control the application of subsidiarity by regional parliaments. There are still unresolved questions over the weighing of votes between the Self-Governing Communities and the resolution of differences with the Cortes. It is an emerging truth that the future of the Accords depends on Senate reform and the introduction of a European clause, in the context of future constitutional reform, obliging the Government to inform the Senate about acts of the EU which have important implications for the Self-Governing Communities.

The functioning of the Accords has attracted criticism around questions such as the heterogeneity of the criteria for establishing the representation of the Self-Governing Communities, the unequal involvement of the Self-Governing Communities in matters of European responsibility, and the difficulty of reaching positions of consensus at the CARCE.[16] These difficulties led the Basque Country to reactivate the Basque/Central Administration Bilateral Commission on matters relating to the EU, even though this has been paralysed since 1999.[17] With regard to

the participation of the autonomous regions in the CoR, this takes place outside the CARCE, via the Self-Governing Communities directly and usually takes the form of some fifty rulings, largely relating to Communications from the EU.[18] But the information flows and collaboration at the heart of the CoR show that relationships between the Self-Governing Communities predominate, and barely exist with other European regions.[19]

It should be noted that the loss of autonomy for the regional parliaments as a consequence of European integration has been enormous. Regional parliaments scarcely participate in the development of any European regulations in matters that previously fell within their powers. It is now the Spanish parliament (The Cortes) which is occupied with those tasks. Moreover, it is frequently the case that European regulations or directives are very detailed, so that the task of implementing these rules is in any case much reduced. Besides, the use made by the Spanish parliament of art.149.1.13 of the Spanish Constitution, which authorises the State to establish the general basis to manage the economy, has limited enormously the function of regional parliaments. In addition, one should mention the lack of interest shown by regions in relation to European issues. In conclusion it is possible to say that regional parliaments in Spain have lost a significant amount of their legislative power.[20]

The Self-Governing Communities in the European Institutions

We would like to present now a brief outline related to the presence of the Self-Governing Communities in the European institutions. We shall begin with the body in which they have a consolidated representation - the Committee of the Regions (CoR) -. We will also analyse their presence in other institutions like the Parliament, the Council of Ministers and the Commission.

The Committee of the Regions.

This is a body that does not have the status of a community institution. So far it has had a peripheral position in the decision-making process. It is a consultative body for various matters that was created as part of the Maastricht Treaty in 1992. Although its denomination is Committee of the Regions, most of its members do not represent regions but a variety of different sub-State local entities. As envisaged in art.263 of the Treaty, the composition of the Committee of the Regions is made up of seats distributed among the member States. This distribution is precisely the same as that for the composition of the Economic and Social Committee.[21] The fact that the same representation has been specified among the member States for both committees without taking into account, in the case of the Committee of the Regions, whether States have or do not have institutionalised regions, gives rise to serious doubts about the regional character of the CoR. It appears more like a committee to provide a forum in which to involve sub-State entities in the management of the internal market, rather than a body to institionalise regional participation. The latter was the objective that drove the German Länder to promote the set up of the CoR.[22] But as a matter of fact, only a minority of the members of the CoR represent regions, and an even smaller number of them represent self-governing regions. The representatives of self-governing regions in the CoR represent about 75 regions distributed among 8 different member States: German and Austrian Länder, Belgian regions and cultural communities (these being the three federal States of the EU); representatives of Spanish Self-Governing Communities and of Italian self-governing regions, as well as representatives of the self-gov-

erning archipelagos of Portugal (the Azores and Madeira) and Finland (the Åland Islands), and representatives of Scotland and Northern Ireland. All of these regions have autonomous parliaments. That is not the case with Wales or the French regions whose assemblies do not have the power to pass primary legislation, but can only legislate within devolved powers.

With regard to the composition of the Committee, its heterogeneity causes important functional difficulties, because not all of its members represent entities which have powers of their own in the matters of competence of the CoR. CoR's areas of interest as recognised by the Treaty of EU are: education; culture; public health; transEuropean infrastructure networks; economic and social cohesion; as well as other matters attributed to the Committee through various reforms of the TEU: transport; employment; vocational training; European social fund; environment; transfrontier cooperation. These are the matters upon which the opinion of the Committee is required by the Treaty. However, this is first of all not a complete list of the matters of regional competence or those within the powers of the Self-Governing Communities. But secondly these are also matters upon which many of the members of the Committee have no competence within the State to which they belong. This is the case with many representatives of municipalities, or of the non Self-Governing regions, or of other representatives of sub-State entities. This heterogeneity in its make-up makes decision making in the CoR difficult indeed. Besides, the fact that a number of members of the Committee are also members of other institutions promotes absenteeism, and/or a lack of rigorous attention to their tasks, and this has become a common feature of the CoR.[23] In addition, the recent incorporation of a significant number of States from central and eastern Europe has brought new participants to the Committee of the Regions who have no tradition of regional structures. Due to a communist past which was guided by centralistic views and imposed by a single party system opposed to distribution of power, this influx of new members has further weakened the regional character of the CoR.

It is reasonable to believe that the CoR may in the future encourage regionalisation in those member States that don't yet have regional structures. However, for Self-Governing regions the CoR is a body endowed with powers well short of their level of autonomy. Nevertheless it procures a forum for relationships among regional and local representatives, a must for developing initiatives of a regional nature. Therefore, the Committee has established several working commissions: territorial cohesion; economic and social policy; sustainable development; culture, education and research; constitutional affairs, European governance and liberty, security and justice; foreign relations and decentralised cooperation.

Relating to the functioning of the CoR it is to be noted that there is some ill-feeling due to the lack of attention paid to it by the Council of Ministers or by the Commission. They are the institutions that, according to the Treaty, should seek the opinion of the Committee[24] but they frequently do not do so. Because neither the Committee of the Regions nor the Self-Governing regions has been granted legitimacy by the Treaty to appear before the Court of Luxembourg[25], their position is clearly weak[26] if such consultation, though foreseen in the Treaty, is not performed. It is also remarkable that while the Economic and Social Committee has to be consulted on matters such as: industry, research, or technological development, the CoR is not required to be so consulted, although these are usually matters of regional power.

In any case, it has to be considered that the opinions of the Committee are not binding, and that it is extremely difficult to ascertain wheth-

er the opinions of the Committee are taken into account by the Council of Ministers or by the Commission. However, reforms of the Treaty have made it possible that the European Parliament may also consult the CoR, and that the CoR, on its own initiative, may issue an opinion on a subject of its interest.[27]

To conclude these reflections on the CoR it is to be noted that according to art.263 of the TUE all members of the CoR have to be representatives of regional or local entities. But due to the fact that there is no definition of a European region, it is up to each State to determine who is a regional representative. The ratio between local and regional representatives in the Committee of the Regions has not been established, nor in what proportion member States should distribute their representation between the two categories.

European Parliament.

Although envisaged by the original Treaties, so far the European Parliament (EP) has not been able to develop a uniform electoral procedure. Thus each member State decides upon the procedure to provide the representation that the TUE attributes to each of them. This has made it possible that some regions have representatives in the EP while others, like the Spanish Self-Governing Communities do not. Spain is a single constituency for the election to the EP. In contrast, Belgian regions are recognised as separate constituencies, and in the UK some constituencies are based in Scotland and Wales. Even Northern Ireland represents a single constituency. There are also several supra-regional constituencies in various countries like in Italy and France, where they group some of the existing regions. In Germany there is a mixed system: a list for the entire country and another list for each Land.

However, in Spain the central parliament has imposed just a single constituency for the entire State. This has prevented members of the European Parliament being elected from regional constituencies in order to bring regional legitimacy. This has forced many of the regional parties to cooperate, with parties of different regions joining together in broad coalitions, as a way to aggregate their votes to obtain representation. This is especially necessary where the population represented is small, as it is in the case of the Basque Country. Nowadays some regional parties have representation in the European Parliament: the Catalan CIU and the Basque PNV. Others have usually obtained representation since 1989: the Catalan Ezkerra Republicana de Catalunya; the Basque Eusko Alkartasuna and Herri Batasuna; the Galician Bloque Nacional Galego or the Andalusian Partido Andalucista. However, the number of representatives of regional parties in the EP is scarce, about twenty out of 785.

European Commission

The representation of the Self-Governing Communities in the European Commission is through the committees for legislative implementation which are part of the structure of the European Commission. These committees are different from those whose task is to counsel the Commission on the development of proposals, which are called consultative committees and to which the Self-Governing Communities do not have access. As we have seen previously[28] the implementation committees are part of the so called *commitology* and are mainly concerned with technical questions. The Self-Governing Communities have shared their representation in these committees with other Self-Governing Communities in rotation between two of them and for periods lasting four years.[29]

Council of Ministers

The participation of the Self-Governing Communities in some meetings of the Council of Ministers: agriculture and fishing, social policy, health and consumer affairs, education, youth and culture has been more symbolic than effective. As envisaged in the accords of December 2004 the Self-Governing Communities have access within the Spanish delegation to the meetings of four different configurations of the Council according to a six month rotation system. These conditions, however, ignore the European system of negotiation, according to which every year about a hundred meetings of the Council are held in its nine different configurations. Member States negotiate among themselves about all matters of competence of the EU. Negotiations are not divided into discrete areas. In fact most of the decisions that are formally taken by the Council are in practice decisions previously made in the working groups of the Council or by the COREPER (Committee of the Permanent Representatives). Usually the formula for negotiation is such that the issues for consideration are linked to other issues previously dealt with or to be dealt with in the future (a "package deal"). When negotiating, every State delegation has in mind what has happened in the past as well as its expectations for the future. Thus, it is of no interest to the negotiating parties that a representative of a region comes just once or twice a year to Brussels to deal with a specific isolated issue. In these circumstances the benefit to the Self-Governing Communities of being at the Council is mainly one of publicity, i.e., that their image be linked to such an important forum.

One could conclude that the presence of the Self-Governing Communities in the European Institutions, except in relation to the Committee of Regions, continues to be essentially symbolic. Even the position of the CoR within the European structure is peripheral. However, regions don't perceive their marginalisation in Europe as a very relevant political issue. European questions usually take second place in the political agenda. The regional political class, with the exception of the Catalans, as reflected in the extensive number of references to the EU in the *Nou Estatut* (new Statute) of Catalonia, does not have a European perspective. A good example of this European myopia is that the project of the new Basque statute, the so called " Ibarretxe Plan" elaborated on 2003 only takes account of the EU in one of its articles[30]. In truth, only in the Parliament of Catalonia are European questions commonly debated.

Regional Prospects

Though the reforms included in the project of the European constitutional treaty have not come into force due to problems related to ratification by several countries, it seems very likely that many of the provisions of that constitutional treaty project will be incorporated into the reform treaty drawn up by a future Intergovernmental Conference.[31]

However, one might suggest that the regional situation in the medium term will not differ fundamentally from the current situation. We will try to outline in a series of points some of the features that will characterise the regional question in the EU in the coming years. Briefly they can be summarised as follows:

1 regional participation will continue to depend on the positions of the regions within the member States and these are not expected to change in the near future from the current situation;
2 regional heterogeneity will increase after the last enlargement involving 12 countries

with no regional structures;
3 the functional difficulties for the Committee of the Regions will increase;
4 processes of regionalisation will be promoted in some member States while in others already regionalised they will lead towards federalisation;
5 regional questions will be a source of conflict in the future of the EU. These five points are dicussed below.

1. In the EU there has so far not been a territorial distribution of power taking into account the regional level. The European Constitution project did not include any new provisions in regard to the regions, and presumably the future Intergovernmental Conference will not do so either. *It is most reasonable to expect that regional participation will essentially continue to be bound to the diverse systems set up in the member States*. Such systems vary, with respect to the rights of information, participation and representation granted to the regions as well as to the legislation in which such rights are embedded. All systems intend to include the regions in the development and application of European laws on issues that, according to the territorial share of power, are a competence of both the Union and the regions, but the effectiveness of such systems differs enormously.

The European Constitution project established a model that distinguished among categories of powers between the Union and the member States: exclusive powers of the Union, shared powers between the Union and the States, and actions of the Union for support, coordination or to complement the powers of the member States. But the European Constitution project did not take into account the level of powers of the regions or the local authorities. So member States are solely responsible for organising the participation of the regions in the process of European negotiation. Such a participation should include not only the definition of the State's initial negotiating positions, but also to take into account that those positions will unavoidably be susceptible to modification, as in every process of negotiation. Besides, the European Community model of negotiation does not work on isolated issues; what happened before in negotiations on other issues is inevitably taken into account while negotiating, as is what is wanted or expected to happen in the future. For instance, a negotiation about fishing quotas might be influenced by what happened in a previous negotiation about e.g., citrus fruit, or by the next negotiation to be held on industry policy. Every State delegation is well aware of what was done by other delegations in the past, who helped whom or who opposed, and who could be an ally or an opponent in the future when negotiating on other issues. One should understand that there are no "watertight" compartments of negotiation, and that negotiations are frequently in form of "package deals". Thus, to limit regional participation to some discrete issues is of no practical use to the regions, because for those taking part in the negotiation, someone who only participates occasionally is of no interest. As referred to above, neither is it of interest to limit the participation of the regions to the definition of the initial negotiating position, which is very likely to vary while negotiating.

For such reasons it was the intention to define and limit the ability of the central administrations to modify the negotiating positions adopted by regions. But due to the nature of the process of decision making in the EU, although the scope for modification of negotiating positions by central administrations was specifically limited, it has not proved excessively difficult for central administrations to avoid such limitations citing "necessity" or "State interest". Because of this, in addition to participation rights, rights of information and rights of representation granted to the regions, it has usually been the case that

regional representatives are part of the State delegation, so as to supervise the European negotiation on behalf of the regions. But in the case of the Spanish Self-Governing Communities no guarantees have been established in relation to the positions that they take amongst themselves on European issues within their competence; positions that will be the subject of subsequent negotiation by the Central Administration and most probably will be changed.

In the European institutional structure, as well as the Council of Ministers, which continues to be the main decision-taking institution, the increasing weight of the European Parliament is also to be noted. As we have seen, the presence of representatives of the regions in both institutions varies greatly. As we know, the composition of the Parliament, in the absence of a uniform electoral rule, depends upon the electoral system of every Member State. Some States only admit one constituency for the entire State, as Spain does, but others recognise regional constituencies. For example Belgium, which in addition to three regional constituencies: Flanders, Wallonia and Brussels, has two electoral colleges: French-speaking and Dutch-speaking. In Germany a single list for the whole country is combined with regional lists by Länder; in Italy and more recently in France there are several supra-regional constituencies. In the United Kingdom, as well as a proportional system for Northern Ireland there is a majority one for England, Scotland and Wales. Thus some members of the European Parliament can - and some others cannot - claim to be regional representatives.

In relation to the Council of Ministers it should be emphasised that most of the decisions formally adopted therein, are actually adopted by its auxiliary bodies, like the Committee of Permanent Representatives (COREPER) or by other committees and work groups of the Council. In fact, it frequently happens that a certain configuration of the Council of Ministers, e.g., for agriculture, formally takes decisions on industry or energy matters which have previously been adopted. It should be noted that for the majority of the issues on the Council's agenda there is no discussion within the Council.[32] It is essentially within the COREPER that most of the decisions are made. COREPER enjoys a more stable composition than the meetings of the Council of Ministers. Members of the COREPER are members of each Member State's Permanent Representations, which are composed of an average of about a hundred officials. They supervise the negotiations on European affairs. Theoretically they represent a joint instrument of the States and the European administrations, but in practice, and due to their position *in situ*, and because of their knowledge of dossiers and the other negotiation agents, their autonomy during the negotiation process is usually substantial. The presence of regional representatives in the Permanent Representations, in the COREPER and in the committees and work groups of the Council is important for regional participation, but it varies greatly among the Member States.[33]

The presence of two councillors, representing the Self-Governing Communities in the Spanish Permanent Representation in Brussels, will undoubtedly favour the interests of the autonomies, due to the connection between the Permanent Representations and the COREPER. But, given that the size of the Spanish Permanent Representation is about 150 members, the effect of the incorporation of two new members must be *nuancé*.

2. *Regional heterogeneity is an important feature of regionalisation that will develop further*. Some Member States are regionalised and some others are not, or only partially, regionalised. Among those with institutionalised regions, some are federations: Austria, Belgium and Germany, while others, like Italy and Spain, are completely regionalised, and others only partially regional-

ised; United Kingdom, Portugal or Finland. Further, some States have autonomous or Self-Governing regions while others, e.g. France, do not grant their regions the power to pass laws.

If we analyse whether there has been historical continuity among autonomous regions, we see that self-government has been characteristic of very few of them: the Hanseatic cities of Bremen and Hamburg, or the kingdoms of Bavaria, Scotland and Navarre. But for many, autonomy is a recent phenomenon: most of the Italian and Spanish regions or the German and Austrian Länder do not have a tradition of self government.

With reference to the composition of the autonomous parliaments, regional heterogeneity is important too. Only a few regional political parties have majorities in regional parliaments: Bavaria, Basque Country, Catalonia, Navarre, Süd-Tirol, Northern Ireland, Flanders, Wallonia and Brussels.[34] In some other parliaments, regional parties, though they may not hold an overall majority of the seats they do have a significant presence of between 20% and 1/3 of the seats: Scotland, Wales, Canary Islands, Veneto, Corsica, Val d'Aosta. But in most of the regional parliaments, regional parties either have no presence or an insignificant one.

Another element relevant to regional heterogeneity is the existence or otherwise of local cultures, some of them even with their own languages. This is an important feature for several regions: Catalonia, Basque Country, Wales, Süd-Tirol, Flandria, Åland. However uniqueness of language is not a common feature for most regions.

Another factor of regional heterogeneity relates to their geographical location. Thus some regions have the characteristic of being islands: Corsica, Sardinia, Sicily, the Balearics, Åland, the Azores, Madeira, the Canary Islands. While some regions are maritime, others are mountainous. Some are on the Atlantic, others on the Mediterranean, on the Baltic etc.. Some are in the north of Europe and some in the south, some in the centre and some are part of the west or east of Europe. Geography is thus an important way of grouping regions. So is financial autonomy as recognised in Navarre and the Basque Country, the Val d'Aosta and the Åland Islands.

Taking an economic classification, certain factors lead to the grouping of the richest regions: Hamburg or Brussels, by GDP, income or purchasing power, so as to distinguish them from the poorest: Extremadura, Calabria. According to population, some are very populous: North Rhein Westfalen, Île de France while others are extremely sparsely populated: Åland, La Rioja.

Regional heterogeneity is even more obvious when analysing regional competences. The autonomy of the German Länder is not equivalent to that of the Austrian Länder. The autonomy of the Italian and Spanish regions is not comparable to the Belgian regions or cultural communities. In addition, not all the Italian and Spanish regions have the same powers. Heterogeneity among autonomous regions is undoubtedly significant and has no correspondence to the powers of the Committee of the Regions, where heterogeneity among its members is even greater.[35]

3. The recent incorporation of twelve new countries into the EU has meant that regional representatives have lost influence in the Committee of the Regions. Most of the new Member States come from former communist dictatorships where centralisation of power, rather than regionalisation, was a feature. Their incorporation has therefore brought no additional regional representatives to the CoR. Regions were simply not institutionalised, nor their autonomy recognised. Besides, States like Malta or Cyprus are too small to have a regional structure. As a result of all this, if to date real regional representatives were a minority in the Committee of the Regions, in the years to come their position will be even weaker. Nevertheless it is reasonable

to believe that new States will initiate a process of regionalisation, though it will take some years. As for the position of the autonomous regions in the Committee of the Regions, it is probable that their marginalisation will reinforce their inclination to form a block inside the CoR. *It is to be assumed that the increasing heterogeneity in the composition of the Committee of the Regions will hamper its functioning*. It will have to deal with former communist administrations and with a Union expanded towards new territories: the Baltic, Central and Eastern Europe, as well as towards some Mediterranean islands.

4. *It seems reasonable to expect that, in coming years, steps will be taken towards regionalisation in many of the Member States*. The management of a market sized at hundreds of millions, in a vast and varied geography, requires structures with the capacity to assimilate diversity and to respond competitively. The Jacobin model which originated in France and which was later established in a large part of Europe is now an eighteenth century anachronism which holds no interest for the twenty-first. How can it be justified that today the administration of France – the "departements", and to a large extent the French regions too - is under the control of the minister of the Home Office? This police-minded model leads to the loss of credibility and distress. It also brings the French administration closer to the more authoritarian models that are a characteristic of dictatorships.

In recent years we are observing processes of deeper regionalisation in Italy, and most recently in Spain. Also, a frustrated attempt in England, where in a past referendum among the population of the Northwest region based around Newcastle, a majority did not support a process of mild regionalisation[36] which would have replicated in England the processes in Scotland and Wales. English rejection of regionalisation seems to be perceived as a fear of bureaucracy.

In Italy the reforms of 1999 and 2001have set in motion a process of promoting the reform of the autonomy statutes and the incorporation of new matters within regional powers. A previous constitutional reform made new constitutional limits more generous to regional autonomy.[37] The process is still unconcluded, pending the reform of the Senate and the possible federalisation of Italy, a perspective that is supported as fiercely by some (Padania) as it is strongly opposed by others.

In Spain, a constitutional reform has not been implemented, though a reform of the statutes for several Autonomies has started. However, some changes have been made with respect to the participation of all Self-Governing Communities in the European Union. On the one hand, central government has started inviting representatives of the bordering Self-Governing Communities to the bilateral top meetings of Spain with France and Portugal. On the other hand, an accord has been signed with all regions to include them in the Council of Ministers' meetings, and their preparatory sessions. In addition, two regional representatives have joined the Spanish Permanent Representation before the EU. Representatives of the Self-Governing Communities will rotate every six months and will assume the responsibility for reaching consensus with the interests of the autonomies. They will represent them under the authority of the chief of the Spanish delegation in Brussels. This agreement is 18 years late in coming, and surely will need to be perfected during the next few years. But the necessity of unanimous decision taking among all regions is an important difficulty for the practical application of the accord. Also, the periodic rotation among them is another difficulty because six months is a very short period in which to acquire the necessary knowledge to deal with European affairs in Brussels. In addition, the intermittent presence of the regions will impair their capacity for negotiation. However, the presence of the autonomies will bring

more control over the negotiation by the State and a better knowledge of the European administration. It will require an effort by the autonomous administrations to set up structures to coordinate among themselves and also between them and the central administration.

5. *The regional level could become an inner source of tension for the Union as well as for the member States*. Several factors lead to the conclusion that the regional dimension will be the origin of endogenous conflicts within the Union's frontiers, in some regions especially. On the one hand, as we have seen, the European Convention forgot the regional dimension. The debate on regional issues was reduced to a single setting in February 2003. Except for a few references there is no trace of the regions in the constitutional project, apart from those dedicated to the Committee of the Regions, which as we know is not strictly a body for regional representation. Additionally, it has not been envisaged that in the future representatives of the regions will be invited to participate in conventions or processes for treaty reform. In fact, the procedures in arts IV-443-444-445 of the constitutional project: Ordinary Revision Procedure, Simplified Revision Procedure, and Simplified Revision Procedure concerning Internal Union Policies and Action, only contemplate the participation of executives and national parliaments. Only Belgium in a Declaration incorporated in the Final Act of the Conference[38] recorded that, in Belgium's interpretation, parliaments of regional and community character are, together with the federal parliament, part of the national parliamentary system. So, with that lonely exception, it seems that in the future representatives of the regional parliaments will continue to be excluded from participating in the procedures to reform the European treaties. This, given what happened in the last European Convention, and if there is no correction to the participants so as to include a representation of the interests of the regional parliaments, makes it reasonable to expect increasing tensions between the Union and the regions. If it does not seem feasible and reasonable to involve both regions and States in the making of Europe, neither does it seem desirable to construct Europe by marginalising its regions. Such a cornering could propel some of them towards ambitions of Statehood.

Regions have important powers in some member States, but these States are a minority among the 27 member States that nowadays comprise the Union. However a majority of the population of the Union is governed by regional authorities. So far the European integration process has favoured the re-centralisation of power within the regionalised States, even within those States that are federalised. Obviously, this re-centralisation has not been free of tensions. For instance, the constitutional reforms introduced in Germany on the occasion of the ratification of the Treaty of Union provided an opportunity to make them public and highlighted the need for changes.. So one could conclude that if the regions perceive that European reforms will be used as a weapon against them or be used to prevent an evolution towards wider regionalisation, this could lead to moves to oppose the process of integration. It is also probable that regionalised member States will have to initiate constitutional reforms so to incorporate guarantees of information, participation and representation rights for the regions, as the regions will become gradually more conscious of the effects of the integration upon their autonomy.

To conclude, it is remarkable that while central powers have compensated for their loss of decision making power through participating in decision making with other States within the framework of the European Union, in contrast the self-governing regions have no mechanism to compensate for their loss of power. The loss of regional power has served to return power to central administrations due to their quasi-mo-

nopoly of participation and representation rights in the European community structure. They are the greatest beneficiaries of the creation of a New Political Centre in Europe. Regional administrations have consented almost without resistance to be transformed from Self-Governing or autonomous entities into administrations with executive character, based on the management and implementation of decisions in the development of which they do not participate. The regional politico-bureaucratic elites have kept European integration low down on the agenda, limiting themselves to specific rhetorical demands. In fact when examining the parliamentary activity of regional assemblies related to European matters it is notable that although parliaments, and especially regional parliaments, are the institutions most damaged by the transfer of power to the European institutions, they have scarcely put aside any time and resources to avoid being marginalised in their parliamentary functions. With the exception of maybe a few, like the Parliament of Catalonia, the weakness showed by the majority of regional parliaments indicates the poor competence of the regional political class as well as its limited sensitivity to European matters. Most of them have done little in the past years but organise sporadic events and casual conferences and happenings in which to waste in a few hours resources that could have been invested in making them fit to handle European issues. Evidently, central administrations have observed this regional incompetence with incredulity and gratitude. Now regional administrations will have to work hard if they want to connect effectively with the European making process, and not simply be administrations for implementing European laws and collecting its funds.

Probably someday it will become clearer that regional autonomy has degraded into an administrative function. This will require correcting. But if these corrections are made wrongly, as in my opinion is the case of the Self-Governing Communities in Spain, these changes will have to be amended later. It might be sufficient for some regions to attend a few meetings of the Council of Ministers, but it may be insufficient for a number of other regions to limit their activity in European institutions to a single day's show. They will probably demand more efficiency and professionalism of other regions and of central administration. Thus, from inter-regional relations some problems may also arise, tensions that previously originated between regions and central administrations. If regions are involved in the government of the State, more transparency can be achieved in running European affairs. Paradoxically, the maturity of the autonomous system in Spain will come at the same time as significant changes due to the redirection of European funds that will have to leave the south of the peninsula and head for Eastern Europe. A significant source of stress for Spain and Europe in coming years.

Prospects for reform in Spain

The pending federalisation of the Spanish State that President Zapatero seemed ready to embark upon at the beginning of his term in office in 2004 has not been undertaken. The reform of the Senate, to convert it into a chamber in which Self-Governing Communities could participate in the management of the central power of the State according to their competences and public resources, has not even started. So far all that has commenced is a statutory reform that has been translated into new statutes of autonomy for Catalonia, Andalusia and Valencia. The Spanish parliament aborted the process of a new statute of autonomy for the Basque Country[39] and the Galician government gave up a similar initiative after the veto of the PP. Constitutional limits have led to several objections to the Catalan *nou statut* in the Constitutional Court which are still unresolved. The main obstacles

to the changes have been the reluctant attitude of the Spanish Popular party (PP) and the indolence of the socialists (PSOE). Both have preferred to bring forward autonomic reforms rather than constitutional ones, so the scope of the reforms has been limited "ab initio", impeding the transformation of the unitary nature of the Spanish State into a federal one. On the other hand, the referenda on the reforms in Andalusia and Catalonia have shown the lack of interest of the population, where less than half of the eligible electors voted. In fact, it is more and more evident that the gap between the political class and the citizenry is widening. The citizenry seems to have noticed that statutory reforms and the widening of regional competences is an opportunity for professional politicians to extend their webs of patronage. Thus the regional, as well as the national, debates are accompanied by increasing unreliability.

Although the functioning of the State has to accommodate the framework of the European Union, the fact that in Spain there is no federal structure causes a serious inadequacy. Autonomy or self-government makes sense if it is maintained within the European Union. But the Self-Governing Communities have been reduced to the role of mere policy executors in matters over which they have powers according to the laws, but in the development of which in practice they do not participate. Although the project of a new statute of autonomy in Catalonia made the relationship with the European integration process key, and received the backing of 90% of the Catalan parliament, its content was severely reduced in Madrid's Cortes and presumably will be further reduced by the Constitutional Court.

The future path for the structure of Spanish autonomy is uncertain. The increasing discredit of the political class, including at the regional level, diminishes the possibility of claims for greater self-government, but it also could increase the radicalisation of demands, and stronger opposition from the centre. But administrative solutions, in the form of granting more regional powers, do not resolve the question of national identity, which is particularly acute in the Basque Country and in Catalonia. The Westfalian model, according to which the State has a right to impose upon the whole population subject to its dominion a single national confession, as if it were a religion, does not seem to be the correct solution for a population with diverse national identities. Some Basques, Catalans and Galicians do not consider themselves Spaniards, but another large part of the Catalan and Basque populations do. So far Spain only recognises a single nationality for all citizens: Spanish. Catalan and Basque nationalism seem to share that very Westfalian view: even though Spanish nationality is currently imposed upon all, in the future - if possible - they will do just the same. All will be Catalan or Basque. In my opinion, however, in the same way as through the Edict of Nantes freedom of religion was granted for every individual, one day a right of nationality will be granted for every person according to his/her own will, thus preventing the prince – i.e. State power - from imposing his national faith upon the individual. As for the political relationship between power and individual, this should be established on the basis of residence, all sharing a European citizenship.

Satisfying the desire for identity recognition is one of the keystones of a globalising world where the symbolic aspects of identity have a substantial and increasing political worth. Nobody wants to be identified as something that he or she does not recognise as his or her own. Political powers should offer a means by which citizens could express nationality according to their feeling, instead of imposing certain national views upon the entire population. National minorities which have emerged recently as a consequence of immigration also demand an answer to match the needs of the twenty first

century, a time in which mobility makes identity a more valuable commodity, in contrast to the views of the nineteenth. An increasing number of the population will during their lifetime live in different States, while easily maintaining relations with their countries of origin, unlike nineteenth century immigration when links with the "old" countries of origin were broken because of the difficulty of communication. The attitude of political powers regarding linguistic recognition is also an element of particular relevance. The attitude of European institutions as well as that of the Spanish central authorities, that have only given recognition to the Spanish language, restricting other languages to a regional level or to the rank of institutional courtesy, leads to an unavoidable cultural conflict.

The political and cultural conflicts that exist in the Spanish State have no equivalent in other parts of Europe.[40] It is not the case in Austria or Germany where except for Bavaria no Land resembles a Nation without Statehood. In the case of Bavaria, where a regional party has, almost since WWII, won a majority of parliamentary support in Munich, it should be taken into account that there is no competition between CSU and CDU, and that the government of Bavaria has traditionally been represented in the federal government. A certain amount of time would have to elapse to find out whether a detachment from federal power would have consequences regarding Bavaria's position towards the EU or Germany. It will take time too to understand whether the Länder incorporated after the fall of the Berlin Wall will manifest a political culture which cannot be assimilated by the rest of the country. In the case of Belgium the political situation is quite unique. The Belgian State is maintained as a consequence of the agreement between two cultural communities: Dutch-speaking and French-speaking, which in addition have two reference States of their own: The Netherlands and France. The particular position of Brussels as a third region, a reference to Flanders, Belgium and the European Union, adds more complexity to the future of Belgium as a State.

In contrast, in the case of Spain the dominant Spanish cultural community ignores all the rest.[41] The Spanish language has a pre-eminence in the Iberian peninsula and a market of more than three hundred million speakers in America. The question being asked today is whether in the future the direction of the hispanophonic market will be conducted from Madrid or from America. It does not seem likely that such a transatlantic perspective would increase the rights of the peninsular minorities. It is more reasonable to expect that the hispanophonic community will be reinforced through the economic and demographic influence coming from America. Thus neither the present nor the future of the peninsular minorities look very bright.

In any case, the situation and perspectives of minorities vary. For instance, Catalan speakers represent a majority in three Self-Governing Communities (Catalonia, the Balearics and Valencia), Catalan is also present in Aragón and in the French Roselló (Catalonia Nord) and it is even the official language of a State (Andorra). Its demographic weight amounts to over 6 million speakers, more than many other languages with official recognition in the European Union. Catalonia economically represents about 25% of the Spanish GDP, but its political weight is much lesser. The Galician culture has a much smaller demographic and economic weight, but being so close to the Portuguese-Brazilian language, has strong cultural allies and a market of several hundreds of millions. On the other hand, Basque culture is the most exposed. With a very small size of about a mere 5% in Spain, and even smaller, not even 1%, in France, it has no other resources but its own for surviving among cultures that number hundreds of millions. Besides the hispanophone, one of the largest in the

world, the francophone culture brings together a hundred million in Europe, and is the official language in Belgium and in Switzerland, and has another hundred million speakers in Africa, as well as a presence in America (official language in both Quebec and Canada), and in the Pacific. Globalisation will undoubtedly strengthen those links and increase the peripheral situation of linguistic minorities (Catalan and Basque among others) in France, which is today already dramatic.

In respect to the position of the Basque Country in the European Union, it should be taken into account that its location is far away from the networks connecting to the center of the market: the so called blue banana, or the axis that connects London-Amsterdam-Brussels-Paris-Frankfurt-Milan. For connection to the market's core, priority has been given to communication links via Madrid, Paris and Brussels, that is, through the Mediterranean and the Rhone valley. Thus, the connection with Portugal will be made via Madrid and from there through the Mediterranean axis, via Valencia. Therefore, the Basque Country is marginalised, in an economic space – the Atlantic and Pyrenean arc - which is disconnected from the European centre and from the connections that have priority links to it. Evidently, the official offer is merely to link to Madrid and Paris as a second level branch, in order to fulfil technical and operational functions, serving the groups and alliances clustered around the aforementioned franco and hispanophonies.

Maybe the example of Navarre, a European State for almost a millennium, could be used as a framework more relevant to the needs of a Basque nation, not to form another nation-State but to integrate with other populations and communities in a sort of a European region, a multicultural citizen space, more adequate to the European characteristic of diversity.

The concept of European Region

Linked to previous reflections one can consider the fact that until now the concept of region that is dealt with here is a kind of region that is part of a single member State. No step has yet been taken towards the configuration of European regions. However one can think about a regional dimension in Europe different from the one that we have analysed in these pages (regions being parts of member States). Though the concept of European region is still embryonic, it could become a solid and necessary step in the process of continental integration.

In the last 50 years Europe has tried to counter the glorification of national characteristics, which was long imposed - with dark consequences - upon millions of Europeans. To promote commonality a process of European integration has been promoted at a continental level over and above the model of the nation-State. The idea of European community links to what we share in common with other Europeans in spite of the – national - characteristics that divide us. Maybe someday nationality - as religion nowadays - will be a private affair, a personal dominion and not a power granted to the prince. But there is a lot still to be done. European citizenship has been established but the nation-State still reigns. An ideology of nationality is recognised in every State and imposed upon all of its residents instead of granting to every person a right to his or her own national persuasion. If we consider increasing mobility and that a large number of people will live in different countries for some periods of their lives, it seems reasonable that they will not have to transform themselves into e.g. German, Italian or Belgian, but that if desired could maintain Hungarian, Mexican, or Japanese nationality. People have to respect the rules of the State but should not necessarily be forced to embrace a nationality.

The concept of the European region can help to direct the exercise of European citizenship towards fundamentals that are different from those promoted by national ideology. The European region can give European perspective to the condition of European citizenship. To date the European population is excessively concerned with national boundaries, lacking connections and pan-European references. In general, cultural connections between Europeans are weak. For instance, there is not a single journal or European weekly publication.[42] This absence of a periodical publication at a European scale seriously impedes the diffusion of a political culture, from Helsinki to Bilbao, or from Palermo to Edinburgh. It makes it clear that there is not yet an existing European public opinion. In contrast, in Budapest, Lisbon, Warsaw or Vienna the receptiveness to American cultural products is overwhelming. The European population is increasingly sharing a culture that is made according to American standards. This does not help Europeans to get to know each other through European points of reference. Cultural communication among Europeans is still something reserved for a very few. Only certain events or European cultural creations reach beyond State frontiers; most remain firmly within the borders.

The European region could become an instrument to interconnect different cultures within a European framework. Obviously, though not exclusively, the development of transborder relationships presents better prospects to those regions to which these boundaries are closer than to those more distanced from other European cultures. Creating a European region in the case of the Basque Country could mean to link the francophone with the hispanophone, as well as developing a space to protect the Basque culture. Anyway the flux of population and technological advances shows that even insular territories can attain the characteristics of a cultural europolis. The European region, as the embodiment of a trans-European space, could be one of the aspects of integration more relevant for the coming decades.[43] European regions could act more freely than States which have ties of historical and self-interest linked to their national characters. These constitute burdens and barriers which are difficult to overcome. In contrast, Euro-regions could be an easier framework to mould, more directed towards the future than tied up by the past.

Conclusions

In their relation with the European Union the role of the Self-Governing Communities has changed from being insignificant to being symbolic. Before the accords of 2004 their participation via CARCE (the Spanish Sectorial Conference for European Affairs) in matters of European power proved to be ineffective. After the 2004 agreement, the regions have been granted access to the Spanish Permanent Representation in Brussels (two members representing the autonomies out of more than 150 members), as well as a right to participate in meetings - in four of the nine different configurations - of the Council of Ministers of the EU. However, their presence is more symbolic than practical, due to the fact that the CARCE has not worked properly, and that the negotiating process in the EU is based on permanent representation and package deals negotiated among participants (connecting different matters, like agricultural funds and energy policy). A sporadic regional presence or limiting negotiation to an isolated item is of no practical use. Besides, the taking of regional positions in the CARCE, for which unanimity is required, has proved to be very difficult to achieve, and opportunities for central administrations to modify the regional position while negotiating with other member

States, very easy to come by. Finally, most of the Council of Ministers' decisions are taken at the COREPER (Committee of Permanent Representatives) anyway. Altogether the system has resulted in a model of participation more theoretical than anything else.

Regarding their role in other institutions and bodies of the EU, the position of the Self-Governing Communities has not changed from the previous situation. In the European Parliament, regions cannot claim to represent populations, because regional constituencies are not recognized: Spain is a single constituency for elections to the EP. In respect to the European Commission, Self-Governing Communities continue to have representatives on so me committees of the Commission responsible for implementing European rules of a technical nature.

Regional participation is conducted mainly through the Committee of the Regions but the peripheral position of the CoR in the European decision-making structure means its opinions are not particularly relevant. Further, in the composition of the CoR, a majority of its members are not regional representatives, but represent other forms of sub-State entities. The heterogeneity of the Committee impedes its work as the powers of its members vary greatly.

As for the prospects for the regions, they are related to several factors. One is the European view on regions and their role in the market and as a political structure. So far the regional question is mainly a matter of concern for member States. Most of them are unitary and centralised States, with the consequence that regional Self-Governing in the EU is not a common feature, especially following the latest enlargement when a large number of States with no territorial distribution of power have entered the Union. So expectations for the 75 regions of autonomous nature will not be very bright in the coming years. But the expected reform of the Spanish State into a federation would undoubtedly be of influence regarding the future role of Self-Governing Communities in European matters. If the Spanish Senate is transformed into a Chamber under the control of the regions and if it is granted real powers in the government of the State (and in the development of the positions of the State to be negotiated in Brussels), European prospects for the regions will change. Also, if regions become more conscious of their Europeanness and integrate the European dimension in their institutions and policies, their European role would be reinforced.

Other factors favour regionalisation as well. For instance most of the population of the EU lives in territories with regional governments, and the size and diversity of the European market supports regionalisation. In fact, after more than half a century the European Union now constitutes a social framework for over 550 million people. Such a scale is unprecedented. Only India and China represent larger communities in law. Like the planet, Europe too faces a huge challenge. Waiting for the future Intergovernmental Conference to bring reforms to the treaties, it has already been agreed that certain institutional rules will not come into force before 2016.[44] However, whatever the circumstances Europe will have to continue to consolidate itself as a European Community. And it is precisely due to this will showed by States and populations that the second half of the 20th century has been so different from the first half, when two monstrous world wars killed millions of Europeans.

However it will take time to integrate certain parts of Europe for which participation in the process of integration has been delayed until recently. While the EEC was in existence, more than a hundred million Europeans were victims of several dictatorships, of national catholic or communist nature, that lasted for several generations after the second world war. Nowadays the prospects for new generations in Europe are

no doubt better than before, when religion, nationalism or communism reigned among Europeans. Many transformations have been undertaken in Europe in recent decades and obviously these are not yet complete. In fact, we still do not know the impact of the recent enlargement, and the consequences of being a community of twenty-seven remain an enigma.

On the one hand European society remains embedded in State structures with many communication problems within Europe. On the other hand, the nation-States, even the most powerful, are increasingly perceived as too narrow a space in which to confront the new century. To overcome the model of the nation-State is an enormous challenge; the nation-States' aspirations to monopolise the human space, although in decline, have not yet given way to a European community of citizens.

The European region could be perceived as a space for implementing Europeanness and for developing European citizenship. We should try to define co-existence in a European Community through elements of Europeanness with a view to surpassing national limitations. Although the Constitutional Treaty Project as well as, presumably, the coming reform treaty derived from a Intergovernmental Conference, will continue to visualise regions from the perspective of the member States, the construction of Europe can be helped and articulated through the development of European regions. They could express Europeanness through its diversity and variety in a way that States cannot because nation-States are bound to structures and frameworks that are barriers to the process of integration. There are many States in Europe, yet no European States. Euro-regions could be locations for Europeanness, a new combination for European reality and symbology.

Notes

1 The use of Catalan, Galician or Basque in the sittings of the Spanish Parliament (The Cortes) is not permitted.

2 For more on the differences between political conflict and violence in the Basque Country, see Bullain, Iñigo. " Conflicto nacional y violencia revolucionaria" and " Dialectica política" in El País (ed. País Vasco) from 24/04/2007 and 09/06/2007 respectively.

3 According to the Accords of December 2004 agreed between the central government and the Self-Governing Communities, representatives of the communities will participate in some of the meetings of the Council of Ministers of the EU. In addition, two representatives of the communities will be included in the Spanish Permanent Representation in Brussels. See in BOE (Boletin Oficial del Estado) from 16/03/2005.

4 The Accord for institutionalising CARCE is from 29th October 1992, BOE 241 from 8/10/93. Internal regulation is in BOE 269 from 10/11/1994, currently in force according to BOE from 8/8/1997.

5 The Ministry for Public Administrations has recognised in several documents that the system based on the Sectorial Conferences has not served to guarantee the participation of the Self-Governing Communities in European affairs. See Bullain, Iñigo " Autonomy and the European Union" pp.343-356 in Suksi, Markku (ed.) Autonomy: Applications and Implications. Kluwer Law International 1998

6 For instance, in the report published in October 2004 corresponding to year 2000, the report on the CARCE outlines the inadequacy of the Conference's functioning. See Roig, Eduard, p.508 en "La Conferencia para asuntos relacionados con la UE enel año 2000", in Informe sobre Autonomías pp.503-519.

7 According to this system the central power demands unanimity from the regions, otherwise the central administration has no obligation to respond to the positions presented

by the regions. On the failure of the system of 1994, see Alberti Rovira, Enoch. "Las regiones en la nueva Unión Europea". Autonomies 29/2003, 177-206, especially p.187.

8 They are between 50 and 100 committees out of the total figure of about 350 committees of the European Commission with normative powers to implement European policies.

9 They are: Acuerdo sobre participación autonómica en las delegaciones españolas y Acuerdo sobre la Consejería para Asuntos Autonómicos en la Representación Permanente de España ante la Unión Europea y sobre la participación de las Comunidades Autónomas en los Grupos de trabajo del Consejo de la Unión, in BOE 16/03/2005.

10 See Roig Molés, Eduard. "La Conferencia para asuntos relacionados con la Unión Europea en el año 2004. Informe Comunidades Autónomas 2004, pp.602-623.

11 It should be taken into account too that according to art. 203 of the Treaty of the European Union reformed in Maastricht, representation is now permitted in the Council of Ministers of members other than central governments, as it was before according to old article 145. However, the authorised representation will be on behalf of the Kingdom of Spain. Direct representation of the Self-governing Communities is not permitted.

12 As is noted in the accords: " what is established in the present Accord will be applied without prejudicing the special provisions flowing from the specific regime of integration of the Canary islands, as well as from the special communitary regime of Ceuta and Melilla".

13 See Francisco Javier Donaire Villa. " La Conferencia para asuntos relacionados con las Comunidades Europeas en el año 2005. Informe Comunidades Autónomas 2005, pp. 634-666.

14 The Basque Country participated as co-ordinator and representative of the Self-Governing Communities in Health and Consumer Affairs Councils in 2005 and in a Fisheries Council in 2006. It is expected to participate in Employment and Social Policy, Education and Environment Councils during the second half of 2007.

15 Information on 2005 collected from Donaire Villa, supra, op.cit. Euskadi has have representation in 14 committees of the European Commission.

16 Critical considerations in Eloisa Susaeta Azcoitia. "Un año de participación de las Comunidades Autónomas en el Consejo de la Unión Europea. Europa/Euskadi nº.189/2005, pp. 5-6.

17 On the Bilateral Commission see Bullain, Iñigo. "Autonomy and the European Union", pp.343-356, in M. Suksi, op..cit. p.354, footnote nº21.

18 For a complete record of these rulings see, "La labor del Gobierno vasco dentro del Comité de las Regiones. Balance annual". Anuario Acción Exterior de la CAV 2006 (in print). Eusko Jaurlaritza/Gobierno Vasco. Presidencia. Secretaria general de Acción Exterior. You may also consult previous years of: Anuario sobre la acción exterior de Euskadi. Instituto Vasco de Administración Pública. This yearly is conducted by J.L. De Castro Ruano and A. Ugalde Zubiri.

19 As shown on p.10 of the Basque Government report previously cited in note 18, of 282 amendments received by the Basque Country relative to rulings of the CoR, with the exception of four submitted by the Åland Islands and 52 submitted by ALDE parties, all the rest were from other Spanish Self-Governing Communities; while of the 148 amendments supported by the Basque Country all related to Spanish Self-Governing Communities with the exception of four relating to the Åland Islands and 33 relating to ALDE (Alliance Democratique Européen).

20 Self-Governing Community parliaments used to pass an average of about a dozen laws every year. In the previously quoted Informe sobre Comunidades Autónomas of year 2000, while Catalonia passed 23 laws - topping the ranking - Euskadi only passed 4, Galicia 5, Andalusia 1. Canary Islands, Cantabria and La Rioja passed 7 laws each. This same year the Spanish Senate passed 14 laws and approved 50 international treaties.

21 See art.258 TEU.

22 In fact the pressure of the Länder upon the federal government, due to the position that Länder have in the Bundesrat (a right of vetoing the ratification of certain international treaties), was what influenced the European Community to create the Committee of the Regions. The German government had the support of Belgium which had by then completed its federalisation. In Belgium the regions and cultural communities have an even stronger say .

23 According to the Nice reform, members of the CoR have to be elected locally or regionally, or they have to be politically responsible to an elected assembly.

24 That attitude has been publically reported by the presidency of the CoR. See Pellisé, Cristina. "El Comité de las Regiones", Informe anual sobre Comunidades Autónomas, Aja, Eliseo (dir), 1999, pp.522-533.

25 The Committee of the Regions asked the Intergovernmental Conference (from which the Nice reform arose) for the recognition of the active legitimacy of the CoR before the Court of Justice of Luxembourg. This initiative had the support of Belgium. See DOC Confer. of 12th may 2000.

26 In contrast, it is established in art.262 TEU that the Economic and Social Committee has to be mandatorily consulted. Such an express obligation is not recorded for the Committee of the Regions.

27 The possibility to be consulted by the European Parliament is due to the reform of Amsterdam, and it is foreseen in art.265 TEU that an opinion of the CoR issued on its own initiative will be sent to the Council and the Commission together with a record of the proceedings.

28 See note 7.

29 Vid., . Astola, Jasone. " La actividad exterior de la CAPV" in Revista Vasca de Administración Pública 68/2004, pp.45-75. "Sobre la actividad exterior de Euskadi", Castro Ruano, Jose Luis y Ugalde Zubiri, Alex. La acción exterior del País Vasco (1980-2003), Oñati: IVAP 2004. Between 1997 and 2003 there were 13 committees and between 2003 and 2006 other 14 on behalf of the Basque Country. Among those committees there were issues like: gas machines; incineration of dangerous materials; air quality or ecological labels.

30 Art.65 out of a total number of 69 articles. The six sections of article 65 contain several claims favouring participation and representation rights of basque authorities in processes regarding elaboration and implementation of Community Law related to spanish and european institutions. Section 6 considers the basque autonomous community as a single constituency for european elections.

31 Though The European Convention almost didn´t bring anything new directly related to the regions, it is relevant to mention that the constitutional project collects in art.I-13 a list of exclusive competences of the Union; in art.I-14, a list of shared competences of the Union with the Member States, and in art.I-17, a list of the so called Union's actions of support, coordination and complement to policies of the competence of the Member States.

32 There can be no other way due to the number of issues and the lack of time for a body which does not have a homogeneous composition nor any continuity over time. Given that there are 27 delegations, if each delegation took 10 minutes to explain its position related to the "ordre de jour", a meeting started at 9 am would conclude initial presentations by 1.30pm, four and a half hours later and without a single break during the whole morning.

33 The three federal States have regional representatives in their REPRES, but not the Italian regions and only since recently the Self-Governing Communities.

34 Though in Belgium there are no Belgian parties. They dissolved at the end of the sixties when the process of regionalisation started.

35 On regional issues and European-ness, see recently, Bullain, Iñigo. Regioak, Estatu-nazioa eta Europear Estatua. Donostia: Hiria 2006.

36 This negative result seems to have influenced

the plans of the British government to extend the process of regionalisation to other areas of England. In fact the area around Newcastle is considered the zone with the most acknowledged regional personality. Its peculiarity expresses itself in a way of talking which is some distance from BBC English.

37 In the new terms of art.117 of the Italian constitution a distinction is made between exclusive competences of the State and concurrent competences. A regulatory power has been established in favour of the regions in all those matters not subject to the exclusive competence of the "Stato". Vid: Bifulco, Raffaele. Le Regioni. Il Mulino 2004. Vid. Aswell, Scarciglia, Roberto (cur). Unione Europea e autonomie regionali. Torino, Giappichelli editore 2003..

38 Recorded in Declaration 49 of the Treaty by the Kingdom of Belgium on national Parliaments, a declaration noted by the Intergovernmental Conference.

39 Though a text of a new statute was approved by a majority of the Basque parliament, the Spanish congress decided in a plenary meeting not to admit it for discussion. The text lacked the support of both popular and socialist parties.

40 For instance the Spanish Congress has vetoed the participation of regional teams in international competitions as Scotland, Wales, or Northern Ireland do.

41 In the past Catalan, Basque and Galician languages were proscribed from education.

42 For a few years, at the end of the eighties and the beginning of the nineties a weekly publication was edited in English in the form of a journal called "The European".

43 As seems to be the belief of Catalonia which, in the company of the Balearics, Languedoc-Roussillon, Midi Pyrénees and Aragon, formally constituted a Euro-region in October of 2004.

44 The concessions favouring Poland can be interpreted as a prolongation of the 2009 date set in the projected constitution for Europe, which had already been fixed in the 34th Protocol related to transitory dispositions for institutions and bodies of the Union, annexed to the Treaty to establish a Constitution for Europe.

Implementation of EU Legislation in the Åland Islands

Sören Silverström[1]

Introduction

This article addresses the topic of implementation of EU legislation in the Åland Islands. It is not concerned with the decision-making process leading up to the enactment of legislation. Implementation of EU legislation refers to various legal obligations applicable in relation to the Member State and the public authorities of that Member State. Usually the term implementation is used in connection with the transposition of EU directives but it sometimes also refers more generally to the application of EU legislation by public authorities of the Member States.

Before proceeding to the main issue on the implementation of EU legislation in the Åland Islands some remarks on the general relationship between autonomous entities and EU law should be made.

- *EU law is neutral towards the division of powers in the Member States*. This is a matter for national constitutional law.[1] However, in practice EU law has some centralising effects which does not usually favour the constitutional status of autonomous entities.[2]
- *The Member State is responsible towards the EU* for the wrongful conduct of autonomous entities. The addressee of infringement proceedings initiated by the Commission is always the Member State although the alleged infringement may in practice only concern an autonomous entity.[3]
- The position of autonomous entities in EU law is further determined by *the principle of loyal cooperation under Article 10 EC Treaty*.[4] Autonomous entities can, for example, be obliged to disregard national legislation which incorrectly implements a directive, and even to apply a directly effective provision of a directive to the advantage of a citizen.[5]

Also the regional authorities of the Åland Islands are subject to these general principles concerning the position of autonomous entities in EU law. However, according to the EC Treaty the treaty shall apply to Åland in accordance with the provisions set out in a protocol to the Finnish Act on Accession.[6] This protocol contains certain derogations from the application of EU law in the Åland Islands.[7]

The preamble to the protocol on Åland states that the treaties shall apply to Åland with certain derogations, which are justified with reference to the special status Åland enjoys under international law.[8] The aim of the first derogation is to uphold the restrictions associated with the regional citizenship (right of domicile) of Åland. These restrictions concern the right to acquire and hold real estate as well as the right of estab-

lishment and the right to provide services. The second derogation is expressly aimed at maintaining a viable local economy in the islands. The territory of Åland is excluded from the application of the EC provisions concerning harmonization of the laws of the member states on turnover taxes, excise duties and other forms of indirect taxation. This derogation ensures the continuation of tax-free sales on ferry traffic to and from Åland.

These Ålandic derogations are exceptional in the sense that there are very few territories which have been granted permanent derogations in the EU primary legislation or the treaties on which the EU is founded. However, the derogations are quite limited in a comparative perspective and outside the scope of these derogations the Åland Islands are fully subject to obligations emanating from EU law.

Different Forms of Implementation and Application of EU Law in the Ålands Islands

EU legal obligations have many sources and come in many shapes. A striking difference between traditional international obligations and EU legislation is the domestic effect of these obligations. The primacy and direct effect of EU law make these legal norms far more effective than traditional international obligations. Every public authority, even municipalities, has an obligation to apply and enforce directly effective EU law. They are also obliged to set a side conflicting national legal norms. Autonomous entities are often also required to implement EU law within their domestic field of competence.

Here is a list of different EU legal obligations that public authorities in the Åland Islands are subject to. The list is not exhaustive.

- *Obligations under primary EU law*. The founding treaties of the EU contain many obligations which are of relevance to the Government of Åland and other Ålandic public authorities. For example, the EC Treaty contains provisions on the four freedoms and competition law.[9] Such obligations apply directly for these authorities, in the sense that no national implementing legislation is necessary. Many of these Treaty provisions have direct effect, so they can be enforced in a national court.
- Obligations arising from EU regulations and decisions. These obligations also apply to the Government of Åland and other public authorities in the Åland Islands without any involvement of national implementing legislation. Implementation is not even allowed. One example where the Government of Åland applies EU regulations is in connection with the Structural Funds.
- *Obligations arising from EU directives*. Directives must be implemented by national law. In some Member States this implementation takes place on national level, whilst in other Member States it also takes place in an autonomous entity or federated state.[10] The implementation of directives within the legislative authority of the Åland Islands is the responsibility of the Government of Åland and the Åland Parliament.
- *Obligations based on case law and general principles of EU law*. Many general principles of EU law have been and are continuosly developed by the European Court of Justice.[11] These include for example the principle of proportionality and principle of effectiveness.

Experiences From Implementation of EU Obligations in the Åland Islands[12]

The Autonomy Act

The position of the Åland Islands in the EU is primarily based on EU legislation. Earlier it was mentioned that the Åland Protocol contains some Ålandic derogations. However, many questions concerning the basic features of autonomous entities in the EU is often regulated in national legislation on a constitutional level. The Autonomy Act of Åland was revised in 1995 when Finland joined the EU and a separate Chapter 9a was included into the Autonomy Act.[13] This chapter was totally revised in 2004.[14]

Chapter 9a defines the basic national framework for the status of the Åland Islands in EU affairs. The Autonomy Act explicitly states that the legislative power and the administrative power is divided between Åland and the State with regard to implementation of EU law. The Autonomy Act cannot be amended without the consent of the Åland Parliament. From this follows that it is legally impossible for the State authorities to implement EU legislation within Åland's field of legislative competence. As implementation and application of EU law within Åland's legislative competence is the sole responsibility of the Ålandic authorities they are in principle required to be aware of all relevant EU obligations mentioned earlier.

The status of the Åland Islands in relation to the European Court of Justice (ECJ) and the infringement proceedings initiated by the Commission are closely linked to the implementation of EU obligations. The State is responsible for infringements of EU law and represents also autonomous entities before the ECJ. The Autonomy Act contains a provision according to which the State authorities, in co-operation with the Government of Åland, shall prepare the positions of Finland within the framework of infringement proceedings initiated by the Commission. Recently a working group has proposed new guidelines which would give the Åland Islands a more prominent role in these infringement proceedings.

In 2004 the Autonomy Act was amended with a provision on the State liability of Åland. According to this provision Åland is liable for a pecuniary sanction vis-à-vis the State if the ECJ has rendered Finland liable to pay a fixed compensation, a conditional fine or some other comparable pecuniary sanction, in so far as it has arisen from an act or omission on the part of Åland. The State and Åland may seek a settlement regarding the amount of the liability, ultimately in a national administrative court. It is clear that this provision concerning the liability of Åland puts more pressure on the Ålandic authorities as the pecuniary sanctions can be very high in an Ålandic perspective. On the other hand, the liability of Åland for these sanctions makes it clear that Åland should always have the right to defence in these proceedings.

Implementation of EU directives in the Åland Islands

It was earlier mentioned that the implementation of directives within the legislative authority of the Åland Islands is the responsibility of the Government of Åland and the Åland Parliament. The Autonomy Act contains exhaustive lists of the legislative authority of Åland and the State. The legislative competence of the EU overlaps in many ways with the legislative authority of Åland. It is also clear that a legislative measure on the EU level can touch upon both the competence of Åland and the State.

The Government of Åland notifies the Commission how EU directives are implemented within the framework of Åland's legislative competence. In connection with the accession to

the EU the Government of Åland notified over 1000 directives. The following statistics on notifications in 2005 and 2006 show that a minority of EU directives fall completely outside the scope of Åland's legislative competence.

	2005	2006
State competence	27	24
Åland's competence	111	137

What is the reality behind these numbers? A very large amount of the directives falling within Åland's competence concern agricultural and environmental affairs. Many of the directives regulate highly technical issues (for example, chemicals and foodstuffs) and therefore the directives are often implemented by way of referring to the relevant State implementing legislation. However, there are also many directives requiring Ålandic legislation which are not simple copies of State legislation.

It is clear that the implementation of directives consumes time and resources in a small bureaucracy. Only eight civil servants are responsible for the drafting of legislation in the Government of Åland. The workforce in Finland or even larger Member States is massive in comparison although the EU obligations are in principle the same for matters falling within Åland's competence. It should also be remembered that before an Ålandic law implementing a directive can enter into force it has to be approved by the President. This procedure can take up to four months and it is possible, for example, that the President annuls the law in full or in part because the Åland Parliament has exceeded its legislative powers.

It seems therefore inevitable that there is always a risk that implementation will in some cases lag behind the time-limits for transposing directives which leads to infringement proceedings initiated by the Commission. It is clear from the case law of ECJ and national courts that Ålandic authorities could be obliged to apply EU directives which have not been implemented correctly or within the prescribed time-limit.[15] However, in practice this seems to be quite unusual.

Application of EU law in the Åland Islands

Application of EU law is a much wider phenomenon than the transposition of EU directives. EU law touches foremost upon issues between public authorities and private persons, usually referred to as public law. This is clear from the fact that the national administrative courts come in touch with EU law much more often than in a civil or criminal procedure. The Åland Islands have very limited competences with regard to civil and criminal matters. Accordingly there is also a large body of EU law that falls within the competence of Åland and is directly applicable in the Government of Åland.

Below is only an outline on different forms of application of EU law in the Government of Åland.

- *State aid*. EU law on state aid is something that all public authorities with public spending powers should be aware of. Relevant EU law is to be found both in primary law (EC Treaty, Article 87-88), EU regulations and commission guidelines and decisions. These rules are directly applied by the Government of Åland but they often give rise to questions about interpretation.[16] Private parties have in some cases made complaints to the Commission and state aid cases have also been brought to national courts.
- *Public procurement*. There is sometimes a close connection between state aid rules and the rules concerning public procurement. However, public procurement is regulated by EU directives which are transposed into national legislation. These rules

are regularly applied by the Government of Åland and there have also been some procurement cases in the Supreme Administrative Court and the Market Court.[17]

- *EU Structural Funds*. The Government of Åland is responsible for the administration of structural funds programmes. Some of these programmes are wholly independent from the national programmes on the mainland. The Government of Åland applies various EU regulations in connection with these programmes.

According to the Autonomy Act an appeal as to the legality of a decision of the Government of Åland may be brought to the Supreme Administrative Court. These court cases are remarkably few if one considers the amount of EU legislation applied in the Government of Åland. This could maybe be seen as evidence that EU law is applied correctly in the Government of Åland, but it could also be seen as evidence of something else. The President of the Finnish Supreme Court said in a recent lecture that there is too little knowledge of EU law and its legal implications in single cases.[18] This could also be an additional reason why there are so few Ålandic court cases where EU law has been applied. A prerequisite for applying EU law is that there is sufficient knowledge about the EU legal system and how it functions. Private persons, advocates, public authorities and courts have to bring this knowledge into court cases so that EU law could have an effect on the outcome of the case.

Infringements of EU law

The Member State is responsible towards the EU for the wrongful conduct of autonomous entities. The addressee of infringement proceedings initated by the Commission is always the Member State although the alleged infringement may in practice only concern an autonomous entity. Also the judgment by the European Court of Justice is addressed to the Member State.

The Åland Islands are quite often indirectly subject to infringement proceedings. Almost all of these proceedings are initiated because of late implementation of directives in the Åland Islands. The pre-litigation procedure consists of a formal notice and a reasoned opinion. The following statistics show how many of the formal notices and reasoned opinions in 2005 and 2006 also concerned the Åland Islands.

	Formal notice		Reasoned opinion	
	2006	2005	**2006**	2005
Mainland	13	12	17	14
Mainland and Åland	7	8	2	2
Åland	-	1	-	5
Total	20	**21**	19	**21**

The statistics show that the main part of the pre-litigation proceedings concern the mainland only. However, the picture is more complicated when looking at the cases brought to the ECJ which only concern Åland. The Commission brought three actions against Finland in 2005 and four actions in 2006. The last few years the trend has been such that Åland's proportional share of Finnish infringement proceedings is significantly higher when the proceedings reach the ECJ.[19] Is this something to worry about? It is so if it is a lasting trend because it could be evidence of trouble keeping up with the implementation of directives. On the other hand, in 2007 there has not yet been any cases in the ECJ concerning late implementation in the Åland Islands.

In only two court cases the Government of Åland has contested the Commission's interpretation of EU law. Especially a judgment by the ECJ finding Finland in breach of EU law because of spring hunting of birds has been controversial in Åland.[20] Another case concerns

the non-implementation of a ban on the selling of snus (moist snuff) in Åland. The Commission brought the case to the ECJ but Finland, contrary to the position of the Government of Åland, agreed with the Commission that there was a breach of EU law. The ECJ delivered a judgment in May 2006 stating that Finland had breached EU law.[21] The case sparked some controversy because the Ålanders were not granted a right to defence.

The ECJ can impose a lump sum or penalty payment on Finland if it finds that Finland, including the Åland Islands, has not complied with its earlier judgment. The liability of Åland for these pecuniary sanctions is regulated in the Autonomy Act. The Commission has on 23 October 2007 decided to bring an action against Finland and proposes that Finland pays a lump sum and penalty payment. The Commission proposes to ask the Court to impose on Finland a lump-sum fine of over 2.029.536 € and if Finland fails to comply before the judgment, a daily penalty payment of 19.828,8 €/day. The Commission's opinion is that Åland has not correctly implemented the ban on snus.[22]

Conclusion

To conclude, implementation and application of EU law is a multifaceted and sometimes complicated phenomena. The article tries to give a brief description of the legal and practical realities in the Åland Islands. A few points could be summarized:

- EU law is often applicable and a part of the legal system as any other national legal norm. In principle all public authorities in the Åland Islands are responsible for having knowledge of the EU obligations applicable to them.
- Implementation of EU directives demands time, knowledge and resources. These demands are accentuated in relation to a very small administration in the Åland Islands.
- The implementation and application of EU law is an important responsibility for the Ålandic authorities because state authorities cannot implement EU law within Ålandic competence. On the other hand, the Member States are responsible towards the EU for the wrongful conduct of autonomies entities. State authorities must therefore take special account of the Åland Islands when Finland represents the Åland Islands in the EU.

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Notes

1 Acting Head of Unit for European Affairs, Government of Åland.

2 The European Court Justice (ECJ) stated the following in case 97/81, Commission v. Netherlands, [1982] ECR 1819, para. 12: "It is true that each Member State is free to delegate powers to its domestic authorities as it considers fit and to implement the directive by means of measures adopted by regional and local authorities. That does not, however, release it from the obligation to give effect to the provisions of the directive by means of national provisions of a binding nature."

3 On the effects of EU law on the constitutional status of autonomies, see for example, Bullain, "Autonomy and the European Union" in Suksi (ed.), Autonomy: Applications and Implications (Kluwer Law International, Dordrecht 1998) or Weatherill and Bernitz (eds.), The Role of Regions and Sub-National Actors in Europe (Hart Publishing, Oxford 2005).

4 See, for example, case C-297/95, Commission v. Germany, [1996] ECR I-6739, case C-52/89, Commission v. Belgium, [1990] ECR I-2821 and case C-365/97, Commission v. Italy, [1999] ECR, I-7773. These cases concern the transposition of EU directives by sub-national autohorities.

5 On the principle of loyal cooperation, see Temple Lang, "Developments, Issues, and New Remedies – The Duties of National Authorities and Courts under Article 10 of the EC Treaty", 27 Fordham Int'l L.J., 2004.

6 See especially case 103/88 Fratelli Costanzo [1989] ECR 1839.

7 Protocol no.2 annexed to the Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Swe-

den and the adjustments to the Treaties on which the European Union is founded, published 29 August 1994, Official Journal C 241. The text of the protocol can be found at <www.kultur.aland.fi/kulturstiftelsen/traktater/eng_fr/ram_right-enfr.htm>. Visited on 9 November 2007.

8 For an account of the accession negotiations and the status of the Åland Islands in the European Union, see Fagerlund, 'The Special Status of the Åland Islands in the European Union' in Hannikainen and Horn (eds.), Autonomy and Demilitarisation in International Law: The Åland Islands in a Changing Europe (Kluwer Law International, The Hague 1997), pp. 189-256.

9 For a historical background of the international status of Åland's autonomy, see for example C. Scarpulla, The Constitutional Framework for the Autonomy of Åland: A Survey of the Status of an Autonomous Region in the throes of European Integration (Meddelanden från Ålands högskola nr 14, Mariehamn 2002). <www.ha.ax/bibliotek/Scarpulla%20fulltext.pdf> visited on 2 August 2007.

10 On the application of the state aid rules in the EC Treaty, see Commission Decision 2002/937/EC of 10 July 2002 on the aid scheme implemented by Finland for Åland Islands captive insurance companies. Official Journal L 329 , 5.12.2002, p. 22 - 29.

11 For a description on the implementation of EC law in other non-unitary states (Spain and the United Kingdom), see Ross and Crespo, "The Effect of Devolution on the Implementation of European Community Law in Spain and the United Kingdom" 28 European Law Review (2003), pp. 210-230 and Aurrecoechea, "The Role of the Autonomous Communities in the Implementation of European Community Law in Spain" 38 International and Comparative Law Quarterly (1989), pp. 74-103.

12 The case law on the primacy and direct effect of EU law is famous. See especially case 6/64 Flaminio Costa v. E.N.E.L., [1964] ECR 1141 and case 26/62 N. V. Algemene Transport – en Expeditie Onderneming Van Gend & Loos v. Nederlandese Administratie der Belastungen [1963] ECR 1.

13 On the status of the Åland Islands in the European Union, see Jääskinen, "The Case of the Åland Islands – Regional Autonomy versus the European Union of States" in Weatherill and Bernitz (eds.), The Role of Regions and Sub-National Actors in Europe (Hart Publishing, Oxford 2005), pp. 89-102.

14 Act on the Autonomy of Åland (16 August 1991/1144). Later amended 31 December 1994/1556, 12 July 1996/520, 28 January 2000/75 and 30 January 2004/68.

15 An unofficial translation can be found at <www.finlex.fi/fi/laki/kaannokset/1991/en19911144.pdf>. Visited on 9 November 2007.

16 See the recent judgment by the Supreme Administrative Court concerning the application of the EU habitats directive in the Åland Islands. Judgment of 7 September 2007 (2273/nr 1895 and 1958/1/06).

17 The Government of Åland is sometime required to notify state aid measures to the Commission. See for example the Commission decision on investment aid to Mariehamns Bioenergi. <eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_248/c_24820061014en00200021.pdf> visited on 9 November 2007.

18 See, for example, judgment of the Market Court of 10 September 2003 (MAO:173/03). <www.oikeus.fi/markkinaoikeus/21261.htm> visited on 9 November 2007.

19 A reference to this lecture can be found at <www.yle.fi/news/id71346.html> visited on 9 November 2007.

20 The ECJ has given judgment in seven cases concerning late implementation of directives in the Åland Islands. C-292/03 (8 July 2004), C-327/04 (24 February 2005), C-107/05 (12 January 2006), C-159/06 (26 October 2006), C-152-154/06 (26 October 2006).

21 See case C-344/03, Commission v. Finland, [2005] ECR I-11033.

22 See case C-343/05, Commission v. Finland, judgment of May 18th 2006.

23 See the Commission's press release of 24 October 2007. IP/07/1592. <europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1592&format=HTML&aged=0&language=EN> visited on 9 November 2007.

The role of the Åland Parliament in EU matters

Susanne Eriksson

The Åland Parliament is involved at three different levels with European Union (EU) matters. We work together with other EU regions with legislative powers in an organisation called CALRE, the Conference of European Regional Legislative Assemblies. The Åland Parliament is also involved because international treaties only become valid in respect of Åland with the consent of the Parliament. Finally, the Åland Parliament is involved in the implementation of EU directives by the Government.

To begin with, I would like to say a few words about the work of CALRE. Up until the enlargement of the EU in May 2005 a majority of the Union's inhabitants lived in regions with legislative powers. The new member states had no regions with legislative powers, and this means that today we belong, as it were, to the minority in the EU. There are regions with legislative assemblies in countries such us Germany, Spain, Belgium and, of course, the UK, Austria, Italy, Portugal and Finland. A meeting of the speakers of these assemblies is held annually, and there is also a body called the Standing Committee, consisting of one representative from each country. As Åland is the only region with legislative powers in Finland, we always have a seat in the Standing Committee through our Speaker. This seminar deals with issues relating to Spain, and I would therefore like to mention in this context that as late as June this year a meeting of the Standing Committee was held here in Åland, and the President of the Basque Parliament was present.

Thanks to Åland's membership of CALRE, accession to the EU has enabled to Åland Parliament to establish many new contacts at the European level. Even though the various regions are very different in terms of population and other factors, the regions have a surprisingly large number of common interests. This became very clear when the regions formulated their positions towards the Constitutional Treaty. The regions wanted a stronger say in the EU and a clear recognition of the status of regions with legislative powers. To date, the EU has dealt exclusively with member states, regarding the regions as a purely internal national matter. In a more concrete sense, the regions expressed the wish that in elections to the European Parliament regions with legislative powers should be respected when the countries form their constituencies. The regions with legislative powers also wanted to have a say in the European Court of Justice and more direct contacts with the European Commission. These positions towards the Constitutional Treaty were more or less the same as the positions of the Åland Parliament, and thanks to this inter-regional cooperation some improvements were also achieved, such as the recognition of the regions contained in Article I-5 of the Constitutional Treaty.

This leads me to the question of how the Parliament of Åland is involved in the process of ratification of international treaties. Under the Act on the Autonomy of Åland, legislative power is divided between the Parliament of Finland and the Parliament of Åland. Naturally, foreign

policy and foreign relations belong to the competence of Finland, but this does not mean that Åland has no influence in international affairs. Under Section 59 of the Autonomy Act, the consent of the Åland Parliament is required if Finland has concluded a treaty with a foreign state and that treaty contains a provision that conflicts with the Autonomy Act or touches upon areas that are subject to the authority of Åland under the Autonomy Act. In practice, this happens on ten to twenty occasions each year. The President of Finland, acting through the Governor of Åland, submits the treaties, or, more precisely, the laws implementing the treaties in Finland, for approval to the Parliament of Åland. In most cases, the Åland Parliament has no reason to withhold such approval, but simply rubberstamps the treaties. We do not, for instance, have a need to introduce any special rules in treaties concerning double taxation with Malaysia!

However, when Finland started to negotiate with other European countries on issues relating to European integration, first on the EEA treaty, then on EC membership and eventually on membership of the EU, Section 59 of the Autonomy Act suddenly became very interesting from Åland's point of view. As the consent of the Åland Parliament was needed if Åland were to join Finland as a member of the EU, Åland suddenly found itself in quite a strong negotiating position. In the negotiations Åland's representatives declared that Åland could join Finland as a member of the EU, but that there were certain ambitions that Åland wanted to realise in such a scenario. Åland's wishes were accepted first by Helsinki and then by Brussels, or, I should say, the other member states. A special protocol relating to Åland was incorporated into Finland's Treaty of Accession to the EU along with a special "opt-in article". Under this opt-in article, the Treaty would only apply to Åland – i.e. Åland would only join Finland as a member of the EU – if the Finnish Government notified the ratification state that such should be the case.

When the negotiations had been concluded, two separate referendums were held in Åland. In the first the voters were asked whether Finland should join the EU, and in the second, whether Åland should join. At the time of the second referendum both Finland and Sweden had already voted yes, and Åland had been granted certain derogations through the special protocol mentioned above. The people of Åland voted yes in both referendums; in the first, by a slim majority and in the second by a considerably bigger majority.

The Åland Protocol contains certain derogations under which Åland has the right to stipulate that only those persons possessing "right of domicile" – a form of regional citizenship – in Åland shall have the right to buy land or establish a business in the region. The Protocol also defines Åland as a "third territory" in respect of all indirect taxation. This was the technical solution arrived at to enable continued duty-free sales on vessels sailing between Åland and Finland even after duty free was abolished in the EU in 1999.

Section 59 of the Autonomy Act remains highly relevant for Åland, as it implies that the consent of the Åland Parliament is needed whenever an EU treaty is amended. Thus, the Constitutional Treaty was presented for approval to the Åland Parliament by the Finnish President. The Parliament actually declined to approve the Constitutional Treaty as recently as September 2007, when it had already become clear that the treaty never would take effect. At least this was the official reason why the Parliament voted no.

The consent of the Åland Parliament will also be required for the Reform Treaty that is likely to be placed before it this coming winter. The Constitutional Treaty contained no opt-in article for Åland and the same is true of the Reform Treaty. The absence of an opt-in article in

the Constitutional Treaty meant, hypothetically, that if the Treaty had entered into force without the consent of the Åland Parliament, this could have created constitutional problems for Finland with respect to the ratification of the Treaty. And, in fact, Finland never sent the ratification instrument for the Constitutional Treaty to the Italian Government precisely because the consent of the Åland Parliament had not been obtained.

In this respect the situation concerning the Reform Treaty is the same as with the Constitutional Treaty, because, as I said, this treaty contains no opt-in article for Åland. This means that Finland will face a problem ratifying the Reform Treaty, too.

Yet there is an interesting difference between the Constitutional Treaty and the Reform Treaty in that the former would supersede the existing treaties while the latter is simply an amendment or addition to the existing treaties. This means that had the Åland Parliament voted to withhold its consent to the Constitutional Treaty, it would in effect have withheld its consent to all of the existing treaties. A no vote from the Åland Parliament to the Reform Treaty, on the other hand, would only have meant Åland declined to bind itself by those amendments which the Reform Treaty adds to the existing treaties. Such a situation would of course necessitate negotiations between Finland and the other member states, and nobody can say today what the result of those negotiations would be. In other words, we cannot say at present what a no vote from Åland would lead to.

Now I would like to address the third way in which our parliament is involved in EU matters. As I said at the beginning, the Åland Parliament also deals with EU matters at the level of secondary law. The EU is a framework for cooperation among governments, and this applies also in the case of Åland. The Government of Åland receives and forms a position on proposals from the European Commission and other EU bodies, and the Autonomy Act lays down a set of procedures for how such matters should be handled. What happened when Åland became a member of the EU was that certain matters which Åland could previously decide for itself were now transferred to the European bodies. Today, Åland's path of influence in those areas goes via Helsinki. The Åland Government has a right to present its position to the Finnish Government in Helsinki, but it is up to the Finnish Government whether to take account of Åland's wishes or not. To some extent, the Åland Government is also able to submit its opinion directly to the European bodies. The specific provisions governing this avenue of influence are contained in Chapter 9a of the Autonomy Act, which can be found at the website of the Åland Parliament, www.lagtinget.ax. In theory, the arrangements are relatively satisfactory, but in practice they give rise to problems, as the drafting of EU matters in the Finnish Government is done in Finnish. Civil servants in Åland have no need to know Finnish, as Swedish is the sole official language in Åland. This makes it very hard for the Government of Åland to take part in this drafting work. This is seen as a big problem, which will most likely be addressed when the Reform Treaty is brought before the Åland Parliament.

There are also rules governing how the Åland Government should consult with the Åland Parliament in these matters. The rules are more or less the same as those governing the consultation procedure between the national government and parliament, and, as you may be aware, Finland is widely regarded as being the country where the parliament is most involved in EU matters. In Åland the consultation process has not yet achieved a satisfactory form, and the Åland Parliament has repeatedly stressed that the Åland Government needs to ensure that EU matters become an integral part of the day-to-day work of the Åland Parliament. In other words, there is

still some way to go.

To sum up: EU membership has led to much wider involvement in international matters on the part of the Åland Parliament, and Åland's accession to the EU has resulted in a new kind of international cooperation through CALRE. The treaties that the Åland Parliament is now required to address has both increased in number and become more interesting as a result of membership, and Åland is now also to some extent involved in secondary EU law. Åland's politicians say the region's opportunities to exert influence in EU matters are unsatisfactory, and it will therefore be very interesting to see what decision the Åland Parliament takes on the Reform Treaty this coming winter.

The Challenges of Developing the Ålandic Autonomy in the Shadow of the EU. Opportunities and Setbacks.

Roger Nordlund

This morning I read in the newspapers that Ålandic wine grapes are a threat against the EU's farm subsidies to Finland. So it's not a very happy day for me. But on the other hand, I'm now also resigning as the head of Government.

Åland should have its own seat in the European Parliament. Since 1993-1994, we have been working very hard for this, and all parties on Åland agree that this is important.

In 2006, The Parliament of Åland made a proposal to the Finnish Parliament, asking for one seat in the European Parliament. The proposal wasn't approved, of course, but the Constitutional Law Committee discussed the proposal and came to the conclusion that Åland actually should have one seat. But the problem is that the population of Åland is too small.

We do not agree with that argument. Finland has two parliaments, one in Helsinki and one in Mariehamn. As long as there are at least two seats for Finland, Åland should have one. This is the opinion on Åland. We managed to convince the Finnish Government as well, and when Finland lost two seats, the Government tried to get back one seat with the argument that Åland should have its own seat because Åland has a parliament of its own.

Unfortunately, the Finnish MPs had another view. They argued for extra seats for their own reasons instead.

Finland's Prime Minister Matti Vanhanen made a last effort at the EU summit in Lisbon on 22nd October, 2007. At the summit, he explained that Åland has its own parliament and that the new EU Treaty also must be approved by the Parliament of Åland, and that Åland therefore should be granted one seat in the Parliament. You know the result. Italy is a bit bigger than Finland, so they got an extra seat. Despite this, we are going to continue our work for a seat in the European Parliament.

Åland has the right to speak in front of the European Court of Justice. This right is becoming more and more important, as most recent developments show. The case of "snuff" is a very good (or bad) example.

In the beginning of this case, Finland and Åland had different opinions. Åland defended its right to sell snuff on the islands and on ferries, but Finland wanted to comply with the EU directive directly. We had different opinions, but Finland was speaking for our view, and that's fine.

Finland supported us, but it was too late, so now we stand in front of the European Court of Justice. Therefore it's really important that we now have the right to express our own opinion directly in front of the Court.

The biggest problem is not that the Ålanders

miss the snuff very much. Snuff it is an important product for the shipping companies. Some of the ferries between Åland and Sweden are under the Swedish flag and some under the Finnish flag. Now, only ferries under the Swedish flag are allowed to sell snuff.

It's a big problem if Swedes who want to buy snuff choose to travel only with ferries under the Swedish flag. We are now facing a threat against our ferries, which can result in ferry companies moving to Sweden. Then, also a lot of jobs and tax income would disappear from Åland to Sweden. We are going to fight for the snuff and for our rights.

When we entered the EU, I voted yes. We had two referendums. One in Finland and one on Åland. I voted yes for several reasons. One reason was that I thought that the Swedish language on Åland would be better secured and that we would enjoy a more Swedish and European environment. On the grassroots level this is true.

But when it comes to the administrative level, we have moved even closer to the Finnish administration. Our road to Brussels goes via Helsinki. Contact with Helsinki has increased tremendously since we entered the EU.

Today it's very difficult for the state authorities in Helsinki to live up to the autonomy act, which states that the language of communication between Ålandic and Finnish authorities should be Swedish.

The working language of ministries and working groups in Helsinki is Finnish. When the Government of Åland employs people, there is no requirement of Finnish language skills. But on the other hand, we cannot do our job in Helsinki exclusively in Swedish. We need to find a solution to this problem, because Helsinki can be an obstacle when we try to get more influence at higher levels.

We should also work more from the ground, and try to influence the preparation of matters to be taken up for consideration, because then we can influence important issues before it's too late, before they reach the higher level.

The EU represents large scale solutions, while Åland is a perfect example of small scale solutions. This means that it's difficult for Åland to fit into the big EU programs. Sometimes, the administration and bureaucracy cost more than what they are worth. This is a problem for Åland.

The state aid policy is also a problem for us. We do not have the right to decide about taxes, so instead we use subsidies to keep the countryside and archipelago alive. But many of these subsidies are now forbidden, because they are categorized as state aid.

Åland has a dispersed archipelago community where people live all year round. Every community needs at least a school, a shop and good communications. We have to guarantee these basic functions. Now, suddenly, for example, subsidies to the local shops are seen as state aid. This is difficult to understand.

The Åland Protocol and the tax derogation is of great value for Åland. It was very important for us to have the possibility to maintain tax free sales on board the ferries. Otherwise it would have been a catastrophe, if the tax free would have disappeared overnight. This means a lot to the Åland society and to our welfare.

But the tax derogation also brought a so called customs border around Åland, which makes it difficult for Ålandic companies to do business with customers and companies outside Åland. We have tried to make it easier even if we have not yet reached the perfect result. This third country position also gives new possibilities.

More competence within the tax field would give us the possibility to have different tax levels here.

The benefits from the tax derogation has been very big for the shipping sector. It will become less important in the future, but on the other

hand, much more important for land based businesses, especially the service sector. Therefore we have to keep the tax derogation, even if it causes problems for some companies.

I will finish in a more positive way than I started.

According to the programme of this seminar I'm going to talk about the "challenges of developing the Åland Islands in the *shadow* of the EU – opportunities and setbacks". It's always easier to talk about setbacks. But, when we talk about the EU in 5 or 10 years, I hope it could be "in the *sunshine* of EU" and not "in the shadow".

The economy of Åland has been very prosperous since we joined the EU. We have no unemployment, we have a balanced budget, and people are moving to Åland. Åland has become a much more international society during the last ten to fifteen years. The internationalisation is a key factor for the development of our society.

The Åland Islands Peace Institute conducts projects and research into peace and conflict issues in a broadly defined sense from the vantage-point of Åland and the special status that Åland enjoys under international law. It focuses on autonomies, minorities, demilitarisation and conflict management.

The Åland Islands Peace Institute has consultative status with the UN Economic and Social Council, ECOSOC.

The Peace Institute's researchers and guest researchers focus on three subject areas:

- Security
- Autonomy, including the "Åland Example"
- Minorities

The Institute regularly publishes books and reports in these areas. By arranging seminars and conferences and through a growing library that is open to the public, the Institute serves as a meeting-point for Åland, the Nordic countries and the Baltic Sea region.

Autonomy and conflict management seminars are arranged with groups from conflict-ridden regions around the world.

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