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## Re-election of Prime Minister Pedro Sánchez

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*Pedro Sánchez (PSOE) has been re-elected as Prime Minister of the Spanish government with the help of separatist parties from Catalonia and the Basque Country. He is imposing a high price on Spain for his decision. The country is more divided than ever. The relatively young democracy is in danger of being compromised.*



On Thursday, November 16, 2023, the incumbent Spanish Socialist Prime Minister Pedro Sánchez (PSOE) was re-elected as Spanish Prime Minister with 179 out of 350 votes. In addition to the support of the socialist party PSOE (121 mandates), he counted on the votes of the left-wing populist electoral platform Sumar (31 mandates); the Catalan republican separatist party ERC (7 mandates); the ethnic-nationalist separatist party Junts per Catalunya (JxC, 7 mandates); the left-wing extremist Basque EH Bildu (a successor organization of the political arm of the former terrorist group ETA called "Batasuna"; 6 mandates); the Basque nationalists PNV (5 mandates); the Galician nationalist bloc BNG (1 mandate) and the Canary coalition CCa (1 mandate).

No government formation since the adoption of the conciliatory democratic constitution of 1978, following the end of Franco's dictatorship, has polarized Spain as much as the current one. Protests against the formation of this government and, above all, against the planned amnesty for all those involved in the 2017 uprising in Catalonia have been growing for weeks. Hundreds of thousands of outraged citizens gathered in Madrid again this weekend, following 2.5 million people demonstrating across Spain last weekend. The daily

demonstrations in front of the PSOE party headquarters in Calle Ferraz, which have so far been initiated and kept alive mainly by disappointed citizens, have also been joined by (right-wing) radical forces. This does not conceal the fact that a broad social majority is now protesting, extending far beyond the supporters of the opposition parties, the center-right party Partido Popular (PP) and the right-wing populist party Vox.

The protesting professional and social groups represent hundreds of public institutions, organizations, associations and even trade unions. A selection: all four major Spanish judges' associations, which are politically independent but reflect different political affinities; the General Council of the Spanish Judiciary; the Majority Association of Public Prosecutors (AF); the Spanish Employers' Confederation; the International Bar Association (IBA); hundreds of professors of constitutional law and political science of different political worldviews who signed public statements. From the political arena, some well-known former - and a few courageous current - leaders of the PSOE, such as the regional president of Castilla-La Mancha, Emilio García Page, or the former Prime Minister Felipe González, one of the architects of democratic Spain after 1975, are opposed to the agreements. In addition, around 50% of PSOE voters (around 3.9 million) are against the amnesty in opinion polls, as are, of course, the approximately 8 million voters of the People's Party and the 3 million of Vox.

## Background

Outside observers with an inclination towards Spain are puzzled. The current events do not fit in with the widespread narrative that Socialist Prime Minister Sánchez, together with the far-left Podemos party, supposedly got Spain well through the coronavirus crisis during the last legislative period (2020-2023) in a so called "coalition of progressives", consolidated Spain's economy and, above all, achieved socio-political milestones for more justice, equality and opportunities. Important concessions to the separatists in the previous legislative period, such as the group-related amendment to the criminal law (abolition of the sedition and minimization of the misappropriation law), were praised as far-sighted actions by Pedro Sánchez as a supposed contribution to the "pacification" of the territorial conflict through the "de-judicialization" of an allegedly political conflict.

Why are so many people resisting Pedro Sánchez's promise to continue "progressive" policies, to work on Spain's "internal pacification" and to prevent Spain from "relapsing into the restorative, dark right-wing past", even to build "a wall", as Sánchez literally said in the parliamentary debate?

A more concrete and current bone of contention are the concessions that Sánchez granted to the regional parties that support him without any significant quid pro quo. The governing parties PSOE and the left-wing extremist party Podemos - which effectively no longer exists - suffered devastating defeats in the regional and local elections in May 2023, while the PP now holds the heads of government in 12 of the 17 autonomous regions (CC.AA.). In response, Pedro Sánchez called early parliamentary elections, which was seen as a mixture of an act of desperation and a stroke of genius. In these elections, the PSOE was able to maintain its result from the previous election, while all the other forces that now have Pedro Sánchez on their backs have emerged from the elections as losers without exception. This is particularly evident in the case of the Catalan separatists. Their political support had already declined before the elections and has now fallen further, in some cases drastically. The share of the vote for ERC, which currently governs Catalonia, has dropped by half. The separatist parties ERC and Junts slipped to third and fourth place in Catalonia on general elections of the 23<sup>rd</sup> of July compared to 2019, with the fifth-placed People's Party (PP) gaining 80,000 more votes than Junts, but still winning one fewer MP due to electoral law. All the separatist parties in the Basque Country and Catalonia together received just 6% of the national vote.

These figures largely explain the bewilderment caused by the fact that such a small minority is politically determining or even blackmailing a majority within Catalonia, let alone the entire country. As Pedro Sánchez already categorically rejected any cooperation with the PP in the last legislative period and continues to do so at present, he was and is dependent on every vote from the small parties. The Junts per Catalunya party with its fugitive leader Carles Puigdemont, whose seven seats helped Sánchez to achieve a decisive leap over the absolute majority of 176 seats, is a particular tip of the scales. All separatist parties, but Junts per Catalunya in particular, were characterized by the fact that they insisted on their maximum demands in the negotiations, while the governing PSOE party did not show any signs of success in the negotiations. This could be seen as the norm in coalition negotiations, but it was the material content of the concessions that caused great concern and uncertainty. As a result, so-called agreements ("acuerdos") were reached. Here are some important facts and details:

- ✚ **JxC** is pushing through an **amnesty law** that is expected to grant a general amnesty to all those involved in the illegal referendum of October 1, 2017 in Catalonia, who were under investigation for sedition, embezzlement and even terrorism. However, this option is not envisaged in the Spanish constitution at present. It is disputed whether a general amnesty is compatible with the constitution. In any case, such a far-reaching reform would require a broad social and parliamentary debate, but the PSOE parliamentary group is rushing it through parliament as an **emergency law** instead. Even in the case of pardons, the Spanish constitution stipulates that those being pardoned must show remorse for their actions in the sense that they will not repeat their rebellious actions. However, on the same day of the investiture in parliament, leading spokespersons for the ERC and JxC made it unmistakably clear that the amnesty would only provide them with the basis and ammunition **to demand referendums** in both regions in order to achieve final independence from Spain, and that they would not give up any of their, in some cases unconstitutional, maximum demands.
- ✚ **ERC** obtained from Sánchez a first extraordinary **debt relief** for Catalonia from the Regional Liquidity Fund (FLA) of EUR 15 billion (roughly equivalent, for example, to an annual budget of the Autonomous Region of Galicia, which was arbitrarily waived); the transfer of ownership of the **regional rail transport** to the Catalan regional government and the continuation of the Catalan Autonomous Region's **negotiating table** with the central government, which ERC always tries to give a "bilateral" flavor.
- ✚ The **Junts-PSOE agreement** also provides for the possibility of using **Donald Trump's "lawfare" concept** to review completed and ongoing investigations and court rulings concerning the separatists in the areas of sedition, embezzlement/ corruption and terrorism by parliamentary bodies, which would be tantamount to massive **damage to the rule of law principle** of separation of powers in Spain, the fourth largest EU country. Although the term "lawfare" is not formally included in the draft law that the PSOE submitted to parliament on November 13, the extreme instability of the minority PSOE-Sumar government and its dependence on the votes of Junts means that the separatists are likely to continue to politically pursue and **demand the application of this concept**, which is hostile to the rule of law.
- ✚ ERC and JxC have announced that they will make every single approval of this fragile minority government of PSOE and Sumar, which alone has only 154 out of 350 mandates, conditional on the "progress and degree of implementation" of their **maximum demands**. JxC also achieved a clause that would transfer the power to levy all taxes entirely to the Catalan regional government, meaning that all Catalan **taxes would be levied 100% by Catalonia** and for Catalonia, leaving the Spanish treasury empty-handed. It should be noted that Catalonia is the second largest economic region in Spain after Madrid (GDP 2022: approx. EUR 270 billion). Finally, Junts is calling for the formal

institutionalization of the regional territorial conflict by appointing an **international mediator** to lead the negotiations between Spain and Catalonia in order to ultimately achieve an independence referendum.

- ✚ (Public) concessions to other parties: The agreements with the separatist, far-left Basque **EH Bildu** have not been made public, but the fact that the PSOE, whose politicians were also persecuted by ETA in the Basque Country, is now openly negotiating with EH Bildu must already be seen as a **historic breach of taboo**. It is widely assumed that EH Bildu may have demanded assistance from the PSOE to obtain the office of mayor in Pamplona (Navarre) and government pacts in the Basque Country (EH Bildu is increasingly expanding from the Basque Country into neighboring Navarre). The leader of EH Bildu, Otegi, who was convicted of belonging to the terrorist organization ETA, is also calling for a referendum on self-determination in the Basque Country, which he considers to be as good as achieved. In a speech at Sinn Féin, which he gave after the conclusion of negotiations with the PSOE, he said: "Both in **Ireland and in the Basque Country, good times have dawned for the independence movements**".
- ✚ The Basque nationalists from the **PNV** wrested a promise from Sánchez to obtain the **authority to administer the social security system** and the **recognition of the Basque language throughout Spain**. The Basque Country is the fifth most economically important region in Spain (EUR 71.7 billion, 2021).
- ✚ For a single vote from the nationalist Galician bloc **BNG**, Sánchez promised to give Galicia the same **tax privileges** that Catalonia will receive. Galicia is, after all, the sixth largest economic region in Spain with a GDP of around EUR 63 billion (2021).
- ✚ None of the four most important nationalist-separatist parties has supported a single political demand that would be in the interests of Spain as a whole. The state as a whole has been and is being misused as a quarry to an unprecedented extent. Moreover, all the representatives of these small parties articulated, without any kind of concealment, that all these concessions were only seen as an intermediate step towards actual independence.
- ✚ In view of the amnesty debate, some of the anti-economic demands for tax increases and redistribution made by the extreme left-wing Sumar group are only partially reaching the public.

## Political assessment

The resistance and indignation of large sections of the Spanish judiciary, the financial authorities, the autonomous communities and the population can only be understood in the light of those specific demands and statements.

An amnesty as a contribution to a political solution to the territorial conflict would have been conceivable if Sánchez had sought a large majority together with PP and, conversely, if the separatists had renounced their maximum demand for separation from Spain. Neither has happened and neither will happen. What's more, the amnesty law now effectively reinterprets the Spanish democracy of 1978 as an illegitimate state, discredits its law enforcement agencies and regards the rebels against the democratic constitution as political victims. The possible appointment of political commissions in parliament to review the judiciary damages its independence and subjects it to a political mandate (lawfare). This danger has been the straw that broke the camel's back and provoked the current massive resistance.

It can almost be considered a side note that Sánchez and key ministers had already communicated the amnesty as unacceptable and incompatible with the constitution before

the election. This is the reason why PP and VOX have accused Sánchez's turnaround of verging on electoral fraud and even political corruption, as he has bought himself seven mandates in return for bending the rule of law. Describing the opposition leader as a "bad election loser" because he pointed out the dangers to the Spanish rule of law, as some German media have done, does not capture the relevance of the events.

According to the majority expert assessment, the discriminatory and arbitrary debt relief violates the principle of equality of the autonomous communities. Catalonia, the Basque Country and Galicia together account for 29.8% of Spain's economic output (2021), which is why it is completely utopian that Sánchez can refinance such transfer payments to some of the wealthiest areas of Spain without having to impose an even greater tax burden on the already poorer areas, which is diametrically opposed to the idea of overall social development. On the contrary, he will have to compensate for these gifts with higher tax revenues in the structurally weaker regions, which will result in a lack of necessary investment there, which is likely to further exacerbate social and territorial inequality in Spain.

With his exclusionary speeches before and especially during the parliamentary session (Investidura), Sánchez has contributed significantly to the irreconcilable polarization. He literally described all those who did not share his concept of "generosity", "reconciliation" and "social peace" as "reactionaries" and "right-wing extremists" against whom a "wall" must be erected. This is another reason why people from the moderate center, such as critical socialists, liberals and Christian democrats, who tend not to demonstrate, are now taking to the streets with Spanish and European flags. The fact that leading socialists are delegitimizing these demonstrations as incitement is exacerbating the mood.

## Outlook

There is speculation about how long this political government constellation can survive, which is not united by a positive common political project for Spain as a whole, but only by the negative motivation to prevent a PP-VOX government at all costs.

It may last a long time because the alternative of new elections for this coalition of election losers would result in its further weakening, as initial polls suggest. None of the separatists will want to give up the "golden opportunity" that a head of government more dependent on them as ever before, Sánchez, has to implement their maximum demands for his survival in power.

The conservatives' hope that the Constitutional Court could stop the amnesty law also seems premature. The Constitutional Court currently consists of a majority of Sánchez-supporters and dependents, which will probably rule that an amnesty is constitutional, contrary to the *comunis opinio* of constitutional experts published in countless opinion pieces.

The hope of many that the majority of socialists would turn against the PSOE's (self-) destructive course within the party and in a more visible manner has not been fulfilled either. The architects of Spanish democracy, such as Felipe González, who had almost achieved legendary status, appear to present PSOE supporters like political dinosaurs from another era, tiredly ridiculed and without any significant political influence. The venerable Socialist Workers' Party, which is over 100 years old, appears to be a will-less and positionless support apparatus, completely subservient to its leader Pedro Sánchez and de facto stripped of its (formally existing) federal structures - there are no longer any counterweights within the party.

Whether Europe can stop this worrying process, as many in the PP also hope, remains to be seen. Under constitutional law, the **Catalan regional conflict is and remains an internal**

**territorial conflict in Spain**, although the Catalan separatists have repeatedly tried to internationalize their cause and gain European support for their goals over the past decade. Now the PP wants to take the events to Europe in the hope that the EU will investigate and attempt to prevent any violations of the rule of law by Sánchez at national level, similar to Poland and Hungary. Due to the complexity of the situation, it will be important for the PP to be able to always explain to observers in Brussels the difference between the internal matter of the regional conflict and the EU's legitimate review of any breaches of the rule of law by the national government.

As Anne Applebaum recently reminded us, we must not lose sight of the fact that the separatist movement around Junts per Catalunya and Puigdemont was demonstrably linked to the Putin regime in Russia and that **Russia has an essential strategic interest in Catalan independence**, which would give Putin historical influence without precedent in Southern and Western Europe and the Mediterranean.

The authors of this report argue that there are now "three Spains" rather than "two". In addition to the country's historical conflicts, Sánchez has stylized the current dispute as a dichotomous conflict between "progress or the right". A blatant populist oversimplification of reality! The vast majority of Spaniards are in the middle, tired of the constant polarization. They want a constructive policy for all Spaniards and not a privileged few in favor of the majority. Even the majority of Catalans, even many in the Junts- party, want a prosperous coexistence in recognition of their linguistic and cultural singularity, which is already widely recognized and developed in Spain.

The current paradox in Spain is that a minority is acting against the political will of a hitherto silent majority that is in favor of neither amnesty nor the separation of parts of the country. This majority, however, is clearly no longer prepared to remain silent. There is a danger that Ziblatt/ Levitsky-style events will also take place in Spain, weakening democracy from within, even through elections. Experts on Latin America see striking parallels in Pedro Sánchez's approach to Bolivarian left-wing authoritarian systems such as in Venezuela, where institutions were successively taken over by politicians and democracy was "reinterpreted".

If, as expected, the separatists (primarily Junts, ERC and EH Bildu) continue to pursue their public line of unconditional independence for Catalonia and the Basque Country with all their might and use the flare-up of the debate to their advantage, the Spanish state would have a much harder time stopping the momentum this time than in 2017. This is because the Sánchez government has abolished the sedition paragraph in recent years, trivialized the misappropriation of public funds for political purposes ("political corruption") and shifted other asymmetric powers to the regions of the north, allowing them to act much more freely and now lacking some of the decisive rule of law instruments for containment at the time.

Election winner and PP President Feijóo had offered Sánchez six PP-PSOE state pacts in order to organize the urgently needed reforms in the fields of economy, social affairs, security, foreign policy and also territorial order independently of extremists and fundamentalists. Feijóo went so far as to offer alternating government leadership between himself and Sánchez for the coming legislative period. A rapprochement between the major centrist parties, which in the last elections were once again able to unite more than 60% of the votes, contrary to the fragmentation trends in many European countries, will probably only be possible in the period "after Sánchez". Hopefully the country, which actually has so much potential, will not suffer too much damage in the meantime - neither internally nor externally.

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