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Catalonia and the decline of the European Union

At the beginning of the next century, when historians get around to describing the decline of the European Union and the subsequent conflicts on the continent, they will probably proceed in the tradition of Thucydides by seeking the true reasons (*prophasis*) and the immediate causes (*aitiaî*) for the new disaster. It is not difficult to foresee that the behaviour in Germany regarding Catalan separatism will be acknowledged as one of the immediate causes (*aitiaî*) explaining the decline of the European Union.

Among other concepts, the European Union is based on the idea that it is a community of liberal democracies within the framework of rule of law. At the present time, this notion has been seriously called into question in Germany. Not only because of the ruling issued by the Higher Regional Court of Schleswig-Holstein, ordering the separatist leader Carles Puigdemont's release on bail, but also because of the reaction among politicians and mass media who have denied the Spanish Government's and the Spanish judiciary's authority to try the separatists appropriately in accordance with rule of law.

In taking its decision, the Higher Regional Court of Schleswig-Holstein has established analogies with the German federal state. Although this is understandable on the one hand, since a court in Germany can only use its own surroundings for reference, it nonetheless stems, on the other hand, from a mistaken principle because Spain is not a federal state and because the self-governing regions in Spain have a very different constitutional position from that of the states federated within Germany. In many cases, Catalonia's autonomy rights of self-government exceed the framework of powers assigned to Germany's federated Länder.

In addition, the constitutional consensus in Spain is a consequence of historic events that are completely different from those determining the constitutional structure in Germany. Consensus could be described as precarious, for which reason, among others, constitutional reform is much more complicated and much slower than in Germany. The so-called Fathers of the Spanish Constitution arranged it this way so as not to imperil unnecessarily the consensus reached 40 years ago when the Constitution was first drafted and approved by referendum. For this reason, through having openly violated the Constitution, as in the case of Carles Puigdemont, the weight of these violations in the Spanish national context is very different from what might have been perceived in the far north of Germany.

Instead of focusing on the basic rules for the European Arrest Warrant and extraditing Puigdemont to Spain, the Higher Regional Court in Schleswig attempted to carry out, in the shortest possible time, a qualified assessment of the circumstances surrounding the illegal referendum held in Catalonia on October 1st,

2017, something it had not been asked for and thereby clearly exceeding the Court's jurisdiction.

The assessment of the violations of the Constitution and legislation by Puigdemont and his government should be left to the Spanish courts. The liberal democracy in place in Spain not only allows individuals (such as Puigdemont and others) to stand as candidates in elections despite having fled abroad to avoid facing the courts, but also gives them the possibility to confirm their mandate from abroad and even to delegate their vote (in addition to collecting their *per diems* as well!). Such a thing would be unthinkable in Germany. Therefore, there can be no doubt that the accused separatists are going to have a fair trial in accordance with the regulations inherent to the rule of law in Spain. Their lawyers will have the chance to contest the various points contained in the accusations, and the court will not be obliged to strictly abide by the indictment, in the same way as the Schleswig court did not limit itself to the prosecutor's request for extradition.

It would be absolutely atrocious for the EU or even Germany, as proposed, to take on any role as mediators in order to broker a solution in the conflict between the Spanish Government and the Catalan nationalists. Even if one regrets that the Spanish Government has not shown more interest in finding a political solution for the crisis by excessively looking to a judicial solution, boosting Puigdemont by means of a mediation initiative would imply that he might find himself even closer to achieving his goal. He is, of course, going to promise heaven and earth in order to involve the EU and Germany in the conflict. In that case, he would become the master of the process and could raise, without any limit, the price to be paid in order to reach an agreement. The Catalan nationalists are not seeking to achieve a greater degree of self-government; rather, their goal is to achieve sovereignty, that is to say, separation from Spain in order to found an independent state. This is something that the European Union cannot and must not facilitate if it wishes to avoid one of the causes of its future decline.

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