

### *Legal manifestations of emergency in Spanish Euro-crisis law*

In Spain the eurozone crisis has resulted in the normalisation of legislation of emergency that bypasses parliamentary debate (the Decree-law) or strongly limits it (the abbreviated procedure of ordinary laws). Judicial review of these measures has been lenient, the language of emergency having penetrated most recent judicial decisions of the Constitutional Court. Lack of parliamentary debates is a matter to take seriously: much of the legislation of emergency has touched upon socially sensitive issues and is to have a structural effect after the crisis recovery, if any.

#### **The figure of the Decree-law along time**

The Royal Decree-law is a norm with the status of a law that can be passed by the Government alone in case of ‘extreme and urgent necessity’<sup>1</sup>. The Decree-law becomes binding since its date of publication (which often takes place few days after its approval). However, for its content to become ‘permanent’ it needs the validation from the Congress of Deputies (the lower chamber of the Spanish Parliament) within thirty days from the date of its promulgation. This validation consists on an affirmative or negative vote over the Decree-law as a whole, after which the Decree-law becomes an ordinary law. Hence the Decree-law becomes a manner of passing ordinary laws while avoiding parliamentary debates on the substantive content of the law in question.

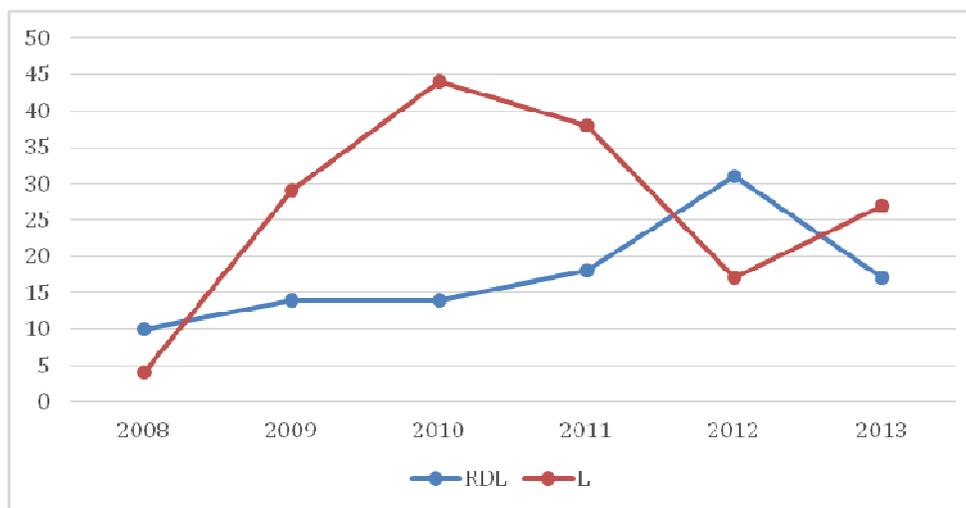


Table 1: Number of Royal Decree-laws and Laws approved from 2008 to 2013 (Source of Data: Browser of Bills of the Spanish Congress of Deputies)

As Table 1 shows, from 2008 onwards the number of Decree-laws increases progressively and begins to substitute ordinary laws in 2010, taking over the legislative activity in 2012 (when the lion share of anti-crisis measures were approved). It seems that the Government has opted for regulating the crisis through

<sup>1</sup> Article 86 of the Spanish Constitution,

an instrument that bypasses any sort of parliamentary debate even though its qualified majority at the Parliament would have guaranteed the approval of ordinary laws. This phenomenon has been referred to as the ‘use and abuse of the Decree-law’.<sup>2</sup>

### **Fields regulated by Decree-law during the eurozone crisis**

The assessment of what constitutes an ‘extreme and urgent necessity’ has been the most problematic issue about the figure of the Royal Decree-law. In this regard, the Spanish Constitutional Court has stated that whereas the existence of an urgent necessity is a political judgement of a discretionary nature<sup>3</sup>, the Government cannot use the Decree-law for tackling issues that were structural instead of unexpected<sup>4</sup>. In addition, the Spanish Constitution poses limits to the fields that can be regulated by a Royal Decree-law: the basic institutions of the State; the rights, duties and freedoms of the citizens, the regime of the Regions and the electoral regime can only be affected by an Organic Law.

To assess the role conferred to the Decree-law during the eurozone crisis, one must not only appreciate its increased use (Table 1), but also the matters it has been called to regulate. Whereas in 2005 these consisted mainly on natural disasters, weather-related setbacks and terrorist events, from 2009 onwards most Decree-laws focus on economic matters. The figure of the Decree-law has been used for topics of extreme sensitive nature, remarkably:

- The provision of a fund amounting €9.794 million for the Greek bail-out<sup>5</sup> in 2010. While all the parliamentary groups supported the assistance to Greece, some left-wing parties complained the lack of parliamentary debate regarding what they considered the leonine conditions of the bail-out<sup>6</sup>.
- Substantial amendments to the Spanish labour regime between 2010 and 2012, such as the creation of a one-year contract without severance payment,<sup>7</sup> the reduction of the salaries of civil servants against their collective agreements<sup>8</sup> and the inclusion of a provision that allows the suspension of collective agreements of public employees when the Government appreciates a severe economic situation.<sup>9</sup>
- The most recent and problematic recourse to the Decree-law in 2014 has enabled the Government to reform 25 ordinary laws with a single mechanism.<sup>10</sup> Among the issues affected are not only labour-related provisions such as measures to promote youth employment, but also other

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<sup>2</sup> A Díaz de Mera Rodríguez, ‘Gobierno de Crisis. Uso y abuso del Decreto-ley’, in *Revista Parlamentaria de la Asamblea de Madrid* No. 24, June 2011, pp. 137 – 179.

<sup>3</sup> *Sentencia del Tribunal Constitucional* 29/1982.

<sup>4</sup> *Sentencia del Tribunal Constitucional* 68/2007.

<sup>5</sup> Royal Decree-law 7/2010.

<sup>6</sup> *Diario de Sesiones del Congreso de los Diputados*, No. 166 of 20 May 2010: [http://www.congreso.es/public\\_oficiales/L9/CONG/DS/PL/PL\\_166.PDF#page=5](http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_166.PDF#page=5).

<sup>7</sup> Royal Decree-law 3/2012.

<sup>8</sup> Royal Decree-law 8/2010.

<sup>9</sup> Royal Decree-law 20/2012.

<sup>10</sup> Royal Decree-law 8/2014.

topics of dubious need for urgent legislation like the management of the Civil Register and the regulation of unmanned drones.

### **The abbreviated procedure of ordinary laws and the constitutional amendment**

Gómez Lugo has pointed out that the use of Decree-laws could have been substituted by the approval of ordinary laws through an abbreviated procedure<sup>11</sup>. This would have shortened the timing of the parliamentary proceedings while allowing for wider debates on the content of the legislation. However, the use of abbreviated procedures during the euro-crisis has not been exempted from criticism given that parliamentary debates have been restricted compared to the magnitude of the issues affected.

In 2011, an amendment of Article 135 of the Spanish Constitution was carried out so as to give constitutional status to the principle of budgetary stability. This amendment was initiated few days after Rodríguez Zapatero received a letter from the European Central Bank prompting him to ‘take audacious measures that guarantee the sustainability of public finances’.<sup>12</sup> Article 135 was among the sections of the Constitution that could be modified through a simplified procedure (with a three-fifth majority at both the Congress and the Senate and without referendum). The Government further shortened the parliamentary proceedings by processing the initiative of amendment through the ‘single reading procedure’ and passing the amendment itself through the ‘urgent procedure’.<sup>13</sup> The two biggest parties (the governing Socialist Party and the opposing Popular Party) had previously agreed on the content of the constitutional amendment. In contrast, the other parliamentary groups complained that they had not had time to react to an amendment they did barely expect.<sup>14</sup> Only thirty-two days passed from the proposal of the amendment to its approval, hence the amendment being called the ‘express reform’.<sup>15</sup>

### **Judicial control of the emergency legislation**

The judicial reactions to the actions against emergency legislation have been lenient. The Spanish Constitutional Court declared the action of unconstitutionality against the amendment of the Spanish Constitution as inadmissible, on the grounds (*inter alia*) that there were reasons of exceptional nature enabling the Parliament to use the ‘urgent procedure’ and to reduce the time limits substantially, even if the applicants did not agree politically with such reasons.<sup>16</sup> The Constitutional Court also declared

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<sup>11</sup> The abbreviated procedures foreseen in the Spanish legislation are the ‘single reading procedure’ (which omits the opinions and reports that would normally be issued by the Parliamentary Committees) and the ‘urgent procedure’ (which substantially reduces the time periods for proposing amendments to the bill). See Y Gómez Lugo, ‘Decreto Ley versus Ley parlamentaria: Notas sobre el uso de la legislación de urgencia’ in *Eunomia*, No. 4, Mar – Aug 2013, pp. 102 – 117.

<sup>12</sup> Letter available at <http://ep00.epimg.net/descargables/2013/11/27/2b10649fe77a0775a23fb7eb465ab974.pdf>.

<sup>13</sup> See footnote no. 11 above.

<sup>14</sup> Diario de Sesiones del Congreso de los Diputados No. 270 of 2 Sept 2011, [http://www.congreso.es/public\\_oficiales/L9/CONG/DS/PL/PL\\_270.PDF](http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_270.PDF).

<sup>15</sup> *El País*, 23 Aug 2011, available at [http://politica.elpais.com/politica/2011/08/23/actualidad/1314128715\\_080054.html](http://politica.elpais.com/politica/2011/08/23/actualidad/1314128715_080054.html).

<sup>16</sup> *Auto del Tribunal Constitucional* 9/2012.

the Decree-law reforming the Statute of the Personnel of the Public Administration to be constitutional. The Court based his reasoning on the consideration that the Decree-law did not attack the content or the essential elements of the right to collective bargaining given that, within the legal hierarchy, collective agreements are always subject to legislation of legal status.<sup>17</sup> Finally, the Constitutional Court has also dismissed the actions of unconstitutionality lodged against the labour reforms of 2012. The Court upheld the possibility for the Government to introduce the reforms through a Decree-law, under the argument that the evident data about the economic crisis and unemployment levels justified the appreciation of an extraordinary and urgent necessity.<sup>18</sup> In a recent decision, the Court has also validated the one-year contract without severance payment for considering it a circumstantial measure linked to a situation of emergency: the soaring levels of unemployment.<sup>19</sup>

### **Social sensitiveness and structural effects of the emergency legislation**

The use of emergency legislation enables quicker reactions at the expenses of political and social dialogue. It is not clear to what extent the Euro-crisis law has respected the constitutional limits established to the legal mechanisms in question (such as the prohibition to regulate fundamental rights and freedoms with a Decree-law). Yet even accepting the constitutionality of the measures, they still pose a normative issue: not only does Euro-crisis legislation touch upon extremely sensitive issues, it might also do so in an enduring manner. Many of the instruments discussed such as the reform of the labour legislation and the new Statute for civil servants are to persist even under non-crisis conditions. One can question to what extent topics closely linked to the Spanish 'social contract' should be regulated outside parliamentary debate and avoiding social contestation.

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<sup>17</sup> *Sentencia del Tribunal Constitucional 85/2011*. The Spanish Constitutional Court had previously declared social dialogue to bear a transcending value in a social and democratic rule of law (*Sentencia del Tribunal Constitucional 68/2007*).

<sup>18</sup> *Auto del Tribunal Constitucional 164/2014*.

<sup>19</sup> *Sentencia del Tribunal Constitucional 119/2004*. Note that the Spanish Constitutional Court had previously declared that severance payments in cases of unfair dismissal are part of the essential content of labour law (*Sentencia del Tribunal Constitucional 20/1994*).