

Catalonia: Fundamental rights

First brought forward to Tuesday, yesterday, Friday (January 22), the legal grounds of the interlocutory ruling on the precautionary suspension of Decree 1/2021, by which the elections scheduled for 14-F were postponed, were notified. Regarding the substance, which will take place, according to the resolution itself, on the 8th, it is not necessary to think too much about what will be its meaning. That is to say, as one party wanted, on Carnival Sunday they will be able to vote.

We will see how much participation – who benefits from a more than likely low turnout? – and in what state of private and public health we will find ourselves, since all the data point to worse. There are several perplexities that this resolution offers us, the most correct of which is its specific vote.

This challenge to the decree takes place in the context of a special procedure for the jurisdictional protection of fundamental rights. Well, first of all, there is practically no debate on the alleged infringement of the plaintiff's right to vote. Indeed, with regard to his alleged right to vote on 14-F, it is not stated why it is threatened. He will be able to vote later: universal suffrage has not been suspended.

The contentious-administrative court of Catalonia has turned an individual procedure -fundamental rights are individual- into a universal trial of the postponement of the electoral date. Nowhere does it weigh the right to life and the right to health -nor, as the dissenting vote says, equality- with the right to vote.

On the contrary, as a new perplexity, it uses two elements to suspend the postponement. One lies in a repeatedly cited element: an intense public interest in holding elections on February 14. It must not be forgotten that we are only talking

about the date of an electoral contest, not about a de facto modification of the electoral system or guarantees. As much as calling elections on Valentine's Day would be a due act -a fact that has a very clear command responsibility-, if once elections are called, a Philomena II comes on February 12, which paralyzes the community life, what do we do? How could we go to vote?

It is good to remember that there is a legal instrument called force majeure. That it represents a force majeure in law is more or less foreseen, although it is an institution of construction in jurisprudential and doctrinal essence. There is no need for a law, in this case the electoral law, the non-existent Catalan law or the current Spanish law, to declare that elections can be suspended due to force majeure. Basques and Galicians -French too- suspended them and nobody appealed the suspension; moreover, Macron was reproached for keeping the first round of the local (elections). No submarine services were used to try to give a coup de grâce to the rules of the game.

Let us remember: on 23-F the Madrid government was sequestered in the Congress. Who governed the destinies of the State? A commission of undersecretaries, and nobody challenged their actions. On the contrary. The force majeure was clear.

In the case of the Catalan elections, as a hypothesis, it can be argued that there is no force majeure. Well: argue that the pandemic, its continuity, the difficulty in overcoming it, does not constitute an unforeseen, extraordinary, irresistible, inevitable and insurmountable event, elements of force majeure as recalled by the interlocutory ruling itself. This is the argumentative orphanage in this field that is evidenced by the decision.

But there is yet another perplexity that blows up the elements of a judicial decision. Indeed, the administrative court takes political sides and does so repeatedly. It does so when it

refers to the fact that the time of political interim that, in its opinion, Catalonia is suffering is too long.

It would be good if a court so fussy about the rumor that the elections cannot be suspended, because the law does not foresee force majeure, would say in which legal norm the foreseen interim is based and submits the duration to a time limit. Leaving aside that it is a matter outside the jurisdiction.

Let's remember again. Rajoy had a bonus track of eleven months, as a good friend has told me in a message from which I can only reproduce this point here. That was indeed an interim and entrenched government, of which he was the cause of irresponsibility, on top of that. As have been Montoro's budgets, which have lasted three legislatures. Or the already repealed Provisional Organic Law of the Judiciary: it was in force from 1870 to 1985. Provisionality, a new legal category to which the courts should devote their efforts to abolish. Déu-n'hi-doret (What a fabric!).

Delaying the elections seems to the court something unbearable and, to dramatize even more, it obviates in more than one occasion that if the pandemic situation accompanies -and it is reasonable to expect it to be so- the electoral date will not be postponed sine die. On the contrary, he reiterates that the postponement horizon is infinite, which is radically false. It is one thing to condition the new date to an improvement in public health, which is what Decree 1/2021 says, and another to say that the elections are postponed. This is the judicial framework of the suspension.

I cannot, however, finish without referring to those who, expressly or not, say that all this mess is explained by the fact that Decree 1/2021 is a legal botch-up. It has been said by the wise men on duty that the Basque decree and the Galician decree were indeed good; well, that they were two pieces to be kept, if there were any, in the Legal Hall of

Fame.

The first thing you have to do to talk about law is to know how to read, that is, not only to put letters together, but to have a reasonable reading comprehension. Well, the three decrees, to begin with, have the same title: "to leave without effect the elections called", and their three articles are practically identical. Well, not completely identical: the Catalan decree sets the date of the elections if everything improves, something that neither the Basques nor the Galicians did, and, besides giving notice to the respective parliaments, the Catalan decree gives notice to the Central Electoral Board. In other words, the Catalan provision guarantees legal certainty in a much more satisfactory way, setting a time limit, something that their counterparts, never contested, it is once again recalled, did not do.

What I was saying: reading comprehension.