Cooperation Between Autonomous Communities: An Opportunity to Rationalise the Autonomous State in Times of Crisis

Josep M. Castellà Andreu

Uneasy Constitutional Regulation Towards Cooperation Between Autonomous Communities: Article 145.2 of the Spanish Constitution

Autonomous Communities involvement in national decision-making and cooperation between State and Autonomous Communities tend to be cited as one of the major weaknesses of the Autonomous State. Within this particular situation, horizontal relations between the various Autonomous Communities pose somewhat of a paradox. On the one hand, they are the only kind of relations set out in the Constitution, albeit from a standpoint of cautious unease towards the Autonomous Communities, through express mention of the legal mechanisms on which such relations are based: cooperation accords and agreements (Art. 145.2 of the Spanish Constitution: hereinafter "SC"). On the other hand, a look at the past 30 years of the Autonomous State reveals how little such relations have been used by the Autonomous Communities. The Council of State has highlighted the "clearly inadequate nature [of the constitutional precept], which focuses more on restricting Autonomous Community initiative to cooperate or collaborate with one another and with the State than on imposing on them the need to act in accordance with such

The current work forms part of the activities involved in the research project "Estado autonómico y democracia: los derechos de participación en los estatutos de autonomía" (MCI, DER2009-12921).

J.M. Castellà Andreu (✉)
University of Barcelona, Av. Diagonal 684, 08034 Barcelona, Spain
e-mail: castella@ub.edu

A. López-Basaguren and L. Escajedo San Epifanio (eds.), *The Ways of Federalism in Western Countries and the Horizons of Territorial Autonomy in Spain*, Vol. 2,
DOI 10.1007/978-3-642-27717-7_13,

principles. . .".[1] Autonomous Communities have tended to deal with the central administration individually regardless of the fact that the Constitution makes no mention of any such vertical relations.

Specifically, the Constitution confines itself to referring to two kinds of mechanism: agreements and accords, without clarifying how they differ, except for the nature of parliamentary intervention—communication in the former case and authorisation in the latter. With regard to agreements, the Constitution merely adds that they are for the "management and provision of services inherent to the Autonomous Communities", although what purpose accords serve is not made clear.[2] With regard to the parliamentary procedure for authorising accords, Art. 74.2 of the SC specifies that said procedure is to commence in the Senate (Upper House) and requires the agreement of both Houses. Should such an agreement fail to be reached, a mixed parliamentary commission comprising members from both the Upper and Lower Houses would need to be set up. The key lies in knowing what criterion Parliament would apply when deciding whether to deem it an agreement and the type of parliamentary control to be exercised.

In order to determine the difference between agreements and accords, it is not enough to apply formal or literal criteria, which in any case fail to clarify the issue ("management and provision of services" in the case of agreements). Rather, we are forced to draw on material criteria or content. In this vein, José María Rodríguez de Santiago points to a grading or scaling system, ranging from greater to lower intensity, and to the types of link that Autonomous Communities forge with one another through agreements. These range from (1) forbidding the federation of Autonomous Communities (Art. 145.1 of the SC), as would be the case of an agreement between Autonomous Communities that endowed themselves with a common, shared organization, to (2) signing cooperation accords with the authorisation of Parliament, such as agreeing upon the text of a law between two Autonomous Communities that would be approved by each of them, concluding with (3) entering into agreements that would be notified to Parliament, such as setting up a joint commission for consultation and deliberation.[3] Although not referred to by the author, mention should also be made of (4) protocols or informal agreements (widely used) that reflect political commitments or statements of intent and that do not need to be set down in formal terms (these will be dealt with later

[1] *El Informe del Consejo de Estado sobre la reforma constitucional*, published by Rubio Llorente et al. (2006), pp. 163–164. The Council of State refers to the "vagueness and lack of flexibility" of this constitutional regulation as being responsible for such a small number of agreements between Autonomous Communities and urges other informal means of cooperation to be sought (p. 164).

[2] Many authours have criticised the impreciseness of this particular constitutional provision. See the recent work of Tajadura et al. (2010a), p. 218 et seq.

[3] Rodríguez de Santiago (2009), p. 2184. The author feels that, in legal terms, the 1996 accord between the Basque Country and Navarre should have been treated merely as an agreement and not as a cooperation accord since it was confined to setting up a standing body for meetings, which was consultative in nature and whose decisions were not binding. However, the author recognises that in political terms it was not perceived as such.

when examining Constitutional Court Ruling 44/1986 and autonomous legislation concerning agreements).

One problematic issue concerns the kind of control exercised by Parliament, in other words, whether it would be of a legal nature (Rodríguez de Santiago) or, rather, a reflection of political opportunity, since it stems from a political body. Any appeal by the Autonomous Communities against Parliament's decision not to authorise an accord would also seem to be unlikely since such appeals do not appear to have found a place in the various procedures dealt with by the Constitutional Court.

The Statutes of Autonomy, the ordinary state legislator, and the Constitutional Court have all attempted to solve the problem of how the principles and mechanisms concerning relations between State and Autonomous Communities should be handled. To a lesser degree, Statutes and autonomous legislation have sought to regulate the mechanisms governing horizontal cooperation between Autonomous Communities based on the stipulations set out under Art. 145.2 of the SC. The legal system has tended to concern itself with agreements and not with the recently created bodies for horizontal cooperation that have begun to emerge as a result of political agreements between autonomous governments.

Changes to the Statutes Since 2006: An Attempt to Relax Horizontal Relations

Art. 145.2 of the Spanish Constitution urges the Statutes to implement inter-regional cooperation mechanisms: "Statutes may establish instances, requirements and terms ... as well as the nature and effects of the corresponding notification to Parliament". The early Statutes (approved between 1979 and 1983), as well as those approved since 2006, have included provisions that addressed cooperation accords and agreements. Horizontal relations between Autonomous Communities are cited as content, which may be added to the Statute, according to Constitutional Court Ruling 247/2007, 11. This content springs from "specific [constitutional] provisions" (such as Art. 145.2 of the SC) and not from the clauses contained in Art. 147 of the Spanish Constitution, which represents the Statute's minimum or necessary content.

In Constitutional Court Ruling 31/2010, the Court reaffirms its belief that the Statute "is not an inappropriate legal framework in which to proclaim the principles that are to inspire the system of relations between the central administration and the institutions of the Autonomous Community of Catalonia" (Legal basis 13, reiterated in Legal basis 110), although this may be interpreted as meaning that it falls to such rules to determine mainly general principles.[4] However, it goes on to specify the (implicit) constitutional nature of cooperation and underpins the role of

[4] Montilla Martos (2011), p. 160.

the Court itself in the interpretation thereof: "the specific regulatory organisation of this system of rules should reflect the structural constitutional demands which, as the grounding principle for cooperation between each Autonomous Community and the State as well as the relations between all of these bodies, can clearly only be derived through the Constitution itself and, consequently, through the jurisdiction which interprets it . . .".

The theoretical doctrine that has explored the issue has shown how the problem of specifically regulating horizontal relations between Autonomous Communities is largely due to the way in which said regulation has been implemented in the Statutes. Without having been forced to do so by the Constitution, it is the Statutes themselves that from the outset (a) anticipated the required approval of the respective autonomous Parliament; (b) endowed Parliament with the power to change agreements to accords, and (c) in some instances, limited certain agreements to areas that were the exclusive competence of the Autonomous Communities.

The inflexibility of statutory regulation has led the Autonomous Communities to try to circumvent these formal requirements and to sign "protocols" rather than agreements so as to avoid having to inform Parliament. As a result, an informal relationship has prevailed over the relation formed through agreements and accords. As mentioned earlier, experience has, in my view, evidenced that the virtual lack of horizontal relations is not merely a problem of an inflexible system of rules. In general terms, the Autonomous Communities have tended to neglect one another and have focused their attention on the central administration (vertical relations). Moreover, regional governments have shown a greater concern for political considerations and party affinity rather than for institutionalising relations. Finally, regional governments that are in the hands of nationalist parties have shown no desire to form part of multilateral bodies and mechanisms or at least those of a more political or higher ranking nature. Agreements tend to affect the territorialisation of subsidies and financial support and tend to be bilateral in nature, such that the State signs agreements on certain matters with the Autonomous Communities one by one. Horizontal relations have tended to confine themselves to bilateral relations between neighbouring Autonomous Communities concerning matters of mutual interest, and there have been very few multilateral horizontal relations involving all Autonomous Communities or groups of them.[5]

The new Statutes have, however, broadened their attention to include inter-institutional relations. Particularly, (1) they have embraced certain general principles of said relations (bilateral and multilateral cooperation, institutional loyalty), (2) they have regulated bilateral relations (bilateral commissions), and (3) they have concerned themselves with Autonomous Community involvement in certain bodies or have used procedural or functional mechanisms of involvement (opinions, reports) regarding State competences, in which the Autonomous Communities may have an interest (due to their being related to their own competences). Less attention has focused on

[5] For an overview of the current situation, see Arbós Marín (2009). Also in García Morales (2010), p. 163 et seq.

multilateral relations, whether vertical (which is understandable since regulation over any such matters should be general) or horizontal (which is not quite so understandable since the Constitution calls on the Statutes to regulate thereon).

With regard to the latter relations, the revised statutory provisions have in part amended certain features of previous regulation that had been the focus of criticism from scholars, except for the case of Andalusia (Art. 226), which has remained virtually the same as before.[6] In general:

a) There is no need to seek approval or authorisation from the regional Parliament, it being sufficient to inform said body (as well as the national Parliament: Aragon Statute Art. 91.2). If approval is required, it is confined to cases in which the agreement affects legislative functions (Catalonia, Art. 178; Balearic Islands, Art. 118)[7];
b) Any mention of the exclusive nature of the competences that the agreements deal with is removed (although it does remain in the Statute of the Valencian Community). Regarding this, we feel that it might be considered that the Statute is not adopting a hard and fast interpretation of exclusive competence but is referring rather to the part of the competence over which the Autonomous Community holds exclusive power (commonplace in many post-1979 Statutes).

However, in the new statutory regulation, there is no change to Parliament's power and authority to redefine agreements as accords.[8]

The case of Extremadura, the latest Autonomous Statute approved to date, is significant due to the detailed nature of its provisions (Organic Law 1/2011).[9] With regard to agreements, a mechanism for notifying the Regional Assembly has been put into place (and for notifying the national Parliament, which may issue a "non-binding recommendation") should there be any clash of statutory competences. The Assembly may require authorisation through an absolute majority vote (Art. 65.3), applying in this instance the mechanism established for solving conflicts between governing institutions (Art. 44). Prior to their being signed by the President, cooperation accord, must be subject to "authorisation without amendments". In other words, they must be ratified by the Assembly, in addition to national Parliament (Art. 66.2). Finally, the Statute of Extremadura establishes that institutions shall promote and take part in horizontal cooperation forums. In this context, reference is made to "purely programme-related or political commitments", apart from agreements and accords (Art. 67).

[6] A detailed analysis of recent changes included in the new Statutes may be found in the special issue of the *Revista Jurídica de Castilla y León,* issue 19, 2009.

[7] This is not the case in the Valencian Community, where an overall majority in the Regional Parliament of Valencia is always required (Art. 59).

[8] Concerning the issue of redefinition by Parliament, see the recent favourable considerations thereon (a minority opinion amongst scholars), González García (2011), p. 103 et seq.

[9] In the 2010 reform, no changes were made to this reform in the Organic Law on the Re-integration and Improvement of Charter-granted rights (Spanish acronym—LORAF) in Navarre.

The Absence of State Legislation: Failed Attempts at Regulating Regional Cooperation in 2001 and 2006: Adopting a Conventional Approach

Parliament first regulated vertical cooperation through Law 12/1983, governing the process of autonomy, and subsequently through Law 30/1992, amended in 1999, focusing particular attention on the system of (multilateral) sectorial conferences. However, this was not the case for horizontal cooperation since it would initially correspond to the Autonomous Communities to establish the legal system for mechanisms governing mutual relations. Yet, it has often been quite rightly pointed out that further horizontal cooperation is key to improving vertical cooperation.[10] As regards cooperation between Autonomous Communities, the standing orders of the Senate (Upper House) set out the parliamentary procedure (Arts. 137–139) as do the standing orders of the Congress (Lower House) (Art. 166). The standing orders of the Senate establish that, at the request of a parliamentary group or of 25 Senators, the agreement may require authorisation, concerning which the General Commission of the Autonomous Communities and the Plenary must issue an opinion. Through an agreement of the Bureau of the Senate in 2008, it was decided to streamline the procedure by disposing of any intervention from the General Commission of the Autonomous Communities, such that now only the Senate Plenary intervenes. In truth, however, the Senate has changed the definition of very few of the agreements brought before it.

Faced with disparities in the Statutes, shortcomings in Law 30/1992 concerning the matter of vertical cooperation, and the problems of implementing vertical and horizontal cooperation in practical terms in the Autonomies, the Minister for Public Administration, Jesús Posada (Popular Party cabinet), put forward a proposal in 2001 for a General Law on Cooperation to the Senate General Commission of the Autonomous Communities. To date, this is the most detailed attempt at setting out in a single national law the systematic regulation of cooperation, lacking in Law 30/1992.[11] The government sought to establish formal, adaptable, flexible, and efficient means for ensuring cooperation between Autonomous Communities; eliminate disputes concerning competences and enhance extrajudicial means of dealing with conflicts; set up or strengthen regional or national cooperation procedures in areas related to competences over which said authorities may not

[10] García Morales (2009), p. 396. For said author, enhancing multilateral horizontal cooperation may serve to offset the politicisation of certain sectorial conferences.

[11] In 2002, the Ministry for Public Administration website published five volumes of the *Informe sobre le proyecto de Ley General de Cooperación Autonómica*. A summary and appraisal thereof may be found in Corcuera (2002), pp. 202–211. I follow the above cited author on this point.

have power, but in which cooperation is advised, and without their power over such competences being affected.[12]

In order to achieve these goals, the proper mechanisms and bodies are required. Reference is made of the need to review the sectorial conferences and bilateral commissions (through already existing multilateral and bilateral cooperation, respectively), the setting up of a "sectorial conference for regional cooperation", vertical and horizontal agreements (concerning which it is stated that they are not playing the role that they could and should be playing), joint consortia and bodies set up by the State and by one or more Autonomous Community or by several so as to accomplish certain goals. Also envisaged is the creation of a "Conference for General Cooperation" or "Conference of Autonomous Community Presidents". Regarding this particular matter, a series of general and open questions are raised that said law should address: holding such meetings with or without representation from national government, with or without all the Autonomous Communities should any refuse to take part, with or without a permanent secretary; the rotational nature of the presidency; convening ordinary meetings once or twice a year and convening extraordinary meetings at the request of a specific number of members; whether agreements need to be passed unanimously or by a majority depending on the case in hand.

The proposal was given a cool reception by the opposition socialist party (PSOE), which stressed the need to reform the Senate rather than strengthen inter-governmental relations, and particularly by nationalist parties and governments, who described it as updating the spirit of the LOAPA (Organic Law on the Harmonisation of the Autonomy Process) or who saw it as an attempt by the State to oversee and control the Autonomous Communities, proposing instead bilateral relations between the State and the individual Autonomous Community in question. The proposal was eventually forgotten, and in July 2002 the Minister was replaced. The issue was never raised again.

Four years later, the Minister for Public Administration, Jordi Sevilla (PSOE), prepared a draft law for cooperation between State and Autonomous Communities, which sought to strengthen multilateral bodies and regulate the workings of the Presidents' Conference.[13] Said draft law never went before the Lower House. In its role as the highest body for vertical cooperation, the Presidents' Conference had been working somewhat intermittently since 2004 and had had very few matters to deal with in its later years.[14] Its own internal rules date from 2009, although thus far there is no legislation governing it. It remains to be seen whether its creation will

[12] The Minister called for broad political consensus, recognising that "whilst the principle of cooperation remains mandatory, as we are reminded by the Constitutional Court ... such an obligation to cooperate can only be achieved voluntarily, since it is extremely difficult, if not impossible, to force cooperation", see Cortes Generales (2001), p. 3.

[13] http://www.elpais.com/articulo/espana/Gobierno/ultima/ley/coordinar/competencias/autonomicas/elpepiesp/20060116elpepinac_4/Tes (consulted 12 November 2011).

[14] On the same issue, see Tajadura (2010b), p. 134 et seq.

give rise to a Conference of Regional Presidents without the presence of the President of the National Government.

Meanwhile, the governments of the six Autonomous Communities that had approved reforms of the Statutes of Autonomy[15] began to meet in 2008, setting up a forum called "Meetings between Autonomous Communities for the Development of Statutes of Autonomy", with a view to increasing cooperation on matters of common interest. Other Autonomous Communities gradually joined this forum, until finally in 2010 an agreement was signed to set up the "Conference of Governments of Autonomous Communities".[16] This is the only body for horizontal cooperation formally set up to date without the presence of the central government. Thus far, they have only approved declarations on certain issues and have adopted a limited number of relevant agreements, with a further three agreements and one cooperation protocol currently in force.[17] The body was created through an agreement between Autonomous Community governments, without it having required the approval of any national law. This particular mechanism's consolidation and recognition will depend on the extent to which it is perceived by its members as proving useful for securing and disseminating information, conveying proposals, and so on. In light of experience to date, it cannot be said that this has been achieved. Fostering horizontal relations between Autonomous Communities has to a large extent proved possible, thanks to the implementation of the accords adopted by the 2004 Conference on Issues Related to the European Communities (CARCE), which allow for Autonomous Community government involvement in the Spanish Delegation of certain formations in the European Union Council of Ministers and its preparatory bodies. Ensuring the presence of one representative from all the Autonomous Communities has enhanced communication between governments and has boosted the creation of cooperation mechanisms.

Constitutional Court Doctrine regarding Cooperation Relations and Its Application to Horizontal Cooperation

Based on the constitutional systems of (cooperative) federal and regional states, Constitutional Court jurisprudence stated early on the implicit principle of collaboration (sometimes also referred to as cooperation, added to which was the principle

[15] Valencian Community, Catalonia, Balearic Islands, Andalusia, Aragon and Castilla y León.

[16] The Santiago de Compostela agreement of 25 October 2010 signed by all the Autonomous Communities with the exception of the Basque Country, Castilla-La Mancha, the Canary Islands, Madrid, and Asturias. With the exception of the Basque Country, all of these Autonomous Communities subsequently signed the agreement. The autonomous cities of Ceuta and Melilla were not included. In 2011, a meeting was held in Santander of what was the first (and to date, only) conference. After the victory of the nationalist CiU federation in Catalonia in the November 2010 elections, the Catalonian government withdrew. President Mas's government opting for bilateral relations with the State.

[17] http://www.comunidadesautonomas.org/ (consulted on 12 November 2011).

of institutional loyalty), "which does not need to be justified in specific precepts" since "it is implicit in the very essence of the State's organisation, set out in the Constitution".[18]

At the same time, the Court has declared with regard to vertical relations that "national competences may not be extended. Nor is it possible thereby to restrict or limit the exercise of Autonomous Community powers in this matter to merely entering into or complying with any agreement between regional administrations" (Constitutional Court Ruling 96/1986).[19] At another point, it also stated that "the duty to cooperate ... involves facilitating the competences of the other body as much as possible" (Constitutional Court Ruling 11/1986).

By contrast, the Court makes scant reference to horizontal relations, although the guiding principles previously stated may be applied to them. Constitutional Court Ruling 44/1986 addresses one very specific agreement between Catalonia (*Generalitat*) and the region of Murcia prior to its autonomy. On that occasion, the Constitutional Court stated that "point 2 of Art. 145 is not, therefore, a precept which enables Autonomous Communities to establish agreements with one another, but rather, assuming such a capacity, delimits through its content the requirements which said regulation in the matter must adhere to in the Statutes, and sets out national parliament control over cooperation agreements and accords" (Legal basis 2). However, as we have seen, there is very little delimitation of content between agreement and accord, the Court clarifying very little else on the matter.

The Court has clearly set out in Constitutional Court Ruling 194/2004 that the inter-regional nature of a matter does not necessarily entail transfer to the State over said matter or State involvement in the handling thereof.[20] Quite the opposite: it provides a favourable opening for horizontal cooperation between Autonomous Communities. This occurred in the case of the composition of the management bodies running the natural parks (based on the competence set out under Art. 149.1.23 of the SC), in which the Law governing the conservation of natural

[18] For instance, Constitutional Court Ruling 18/1982 refers to the duty to cooperate "arising from the general obligation of national and regional authorities to provide mutual help". The Constitutional Court stresses this idea literally, or almost, in subsequent rulings, in which it adds certain features of cooperation: a duty on the part of national and regional authorities to provide mutual information (Constitutional Court Ruling 76/1983) and mutual aid (Constitutional Court Ruling 80/1985), the duty to provide mutual support, and mutual loyalty (Constitutional Court Ruling 96/1986).

[19] In a similar vein, it has also stated that "since this duty does not involve any extension of national competences, the State cannot impose such a duty by adopting coercive measures but, for those which are to be adopted, should seek to do so through the prior agreement of the competent Autonomous Communities, which will thereby participate in shaping the will of the State" (Constitutional Court Ruling 80/1985).

[20] This would only be true when specifically indicated by the SC when competences were shared out. When distinguishing between ports and airports of general interest, water supply works, and communication networks spreading over more than one Autonomous Community, the SC assigns competence to the State, under Art. 149.1 of the SC.

areas and flora and wildlife reserved participation therein for the State. According to the Court, since the Autonomous Communities held exclusive competence over the management of natural areas (executive competence), State administration had no reason to be present in the managerial body. In this instance, an agreement is an appropriate mechanism for providing coordinated management. An agreement is also an appropriate mechanism for the composition of the managerial bodies, which may be made up of representatives from the Autonomous Communities involved.

Constitutional Court Ruling 31/2010 on the constitutionality of the Statute of Catalonia addresses certain issues concerning inter-institutional relations that, whilst not dealing directly with horizontal relations, establish general criteria to be applied thereto, and that may prove to be of interest when envisaging a legal framework for such relations. The Court responds to the challenge lodged against Art. 176.2 and 3 of the Statute of Catalonia concerning involvement in voluntary multilateral cooperation mechanisms between State and Autonomous Communities, and between Autonomous Communities with one another, recalling the basic tenets of multilateral cooperation (valid for horizontal cooperation): the voluntary nature of cooperation and consequent lack of any legal obligation regarding the decisions adopted by such multilateral bodies and mechanisms "which may not impose themselves on those participating therein", non-alteration of control over a competence, and the inability of any Autonomous Community to veto an agreement involving the other Autonomous Communities (either with one another or with the State) (Legal basis 112).

Another aspect that the Ruling deals with is Autonomous Community involvement in national decision-making bodies or procedures, the importance of which in terms of horizontal cooperation cannot be overlooked since one of its principal objectives concerns participation in decision-making at a national scale. One issue to address would be joint action on the part of the Autonomous Communities or action undertaken by some of them against the State in defence of their common interests, as is commonplace in comparative law. This matter is dealt with as a result of the challenge lodged against Article 174.3 (Catalonian regional involvement in decisions made at a national level concerning institutions, bodies, and procedures that affect its competences) and Article 182 of the Statute of Catalonia (Catalonian regional involvement in appointing members of a range of bodies belonging to or related to national administration).[21] The Ruling states that cases concerning involvement in organic and functional terms (1) are contained in general and imprecise precepts, which may be implemented in a number of ways; (2) should be specified by national laws; (3) should safeguard national control over the competence in question; (4) should ensure the "absolute freedom" that in the exercise thereof corresponds to national bodies and institutions (specific scope and specific implementation). From this, it emerges that once it has been set out in the

[21] Due to its particular nature, involvement in appointing judges to the Constitutional Court and members to the General Council of the Judiciary set out under Art. 180 Statute of Catalonia (Legal basis 113) is excluded from the analysis for the moment.

corresponding national legislation, said involvement cannot be of a decision-making nature but must take place in consultative or advisory bodies and within the procedures themselves in the form of non-binding reports (Legal basis 111, reiterated in 114).

Recent Autonomous Legislation: The Cases of Aragon and Catalonia

The new Statutes normally remit the establishment of the legal provisions concerning agreements to autonomous laws. Aragon (in application of Art. 91 of the Statute) and Catalonia (Art. 177.2) were the first to legislate, although they have followed different paths. Whereas Aragon approved a specific law, Catalonia included it in the legal system governing public administration. To date, laws governing agreements at a regional level have been spread over a number of differing rules of a more general nature (standing orders, the law on the government that included the signing of the agreement by the President, such as the 2008 Catalonian Law on the President and the Government, or the law on the consultative council).

The first contribution of Law 1/2011 concerning agreements undertaken by the Autonomous Community of Aragon is the systematic and specific handling of the region's inter-institutional relations through accords (with the central administration, with other Autonomous Communities, within the scope of the European Union, and foreign action, as well as agreements with public law institutions). The Law describes the principles on which accords should be based: institutional loyalty, coordination, and mutual support; the purpose thereof—"to provide citizens with a better service and to ensure rational use of public resources"—together with the limits—non-intervention in control over competences (Art. 5); as well as the possible content of the agreements, such as signatory bodies, the competence that enables the action to be undertaken, the kind of agreement in question, the goal, funding, the duration and period of application, reasons for termination, mechanisms for filing complaints and grievances and for dealing with disputes (Art. 6). With regard to horizontal cooperation relations (Chapter III), the scope of application is described, both for multilateral relations with other Autonomous Communities and for specific relations with neighbouring Autonomous Communities.

The Law draws a distinction between and regulates over three kinds of agreement: (a) protocols or cooperation accords (Art. 16), (b) cooperation agreements (Art. 17), and (c) cooperation accords (Art. 18).

A. Protocols or cooperation accords. These are mission statements or declarations of political intent, exchange of information, or accords setting up joint collaboration or coordination bodies. Whatever the case, the defining characteristics are that they do not entail legal obligations for the parties involved and that neither the regional Parliament of Aragon nor the national Parliament is informed. How other issues are dealt with is less clear; however, a

report issued by the person or centre promoting the accord needs to be included, setting out the goals, background, and commitments, as well as the financial implications for the Autonomous Community (Art. 26 refers it to the "agreement projects", although it is assumed that it should be extended to cover all kinds of "agreement", in the general sense as is used in Art. 15, of which protocols are just one "type"); it is not clear who may sign such protocols; mention is made of regional government of Aragon representatives in the cooperation bodies (Art. 27.2), in this case, seemingly without it being necessary for them to obtain authorisation through a regional government of Aragon agreement in order to sign; by way of a general consideration, at another point it is indicated that entering into "accords and agreements" requires authorisation through a regional government of Aragon agreement (Art. 28.1) or whoever the latter may authorise to do so through a regulation (Art. 28.2).

This is a particularly interesting case due to its simplicity and lack of any requirement to inform Parliament. Its drawback is that it may not entail legal obligations.[22] As we have seen, Autonomous Communities have resorted to such mechanisms on many occasions in an effort to circumvent the need to inform Parliament.

B. Cooperation agreements. With regard to the purpose thereof, the Constitution refers to "the management and provision of their own services", adding, "which result from regional competences" and which are no longer required to be exclusive. The need to inform the regional Parliament of Aragon, as well as the national Parliament within the space of 1 month, is set out, although the consequences take effect immediately subsequent to signing.
C. Cooperation accords. These are used residually, when the action envisaged is not covered by the other mechanisms. They need to be authorised by the national Parliament and "ratified" (voted on in their entirety, without amendments) by the regional Parliament of Aragon.

With regard to cooperation accords and agreements, the stipulations mentioned in point A for protocols are also applicable. In other words, a report describing the agreement project must be included, and authorisation for signing must be sought from the regional government of Aragon with the possibility of delegating the capacity to sign. The authorisation accord must stipulate who the designated signatory will be.

Changes to accords or agreements may involve the following: (a) minor changes made through "addenda" by the legitime authority or signatory representative, subsequent notification to the government being required; (b) fresh authorisation required in the case of "substantial changes" (one example cited of a substantial

[22] Constitutional Court Ruling 44/1986 had referred to such protocols as "mere statements of cooperation or proclamations of aspirations and reciprocal intentions" different to accords and agreements (Legal basis 3). At that moment, the Court noted the difficulty involved in clarifying the contents of an agreement and defended the need to apply a joint legal system, which would move towards the concept of a cooperation accord or agreement requiring parliamentary intervention.

change being greater financial cooperation on the part of the Autonomous Community), Art. 30.

Finally, for the purpose of public notification, all the agreements, as well as any amendments thereto, must be registered with the Autonomous Community Register of Agreements within 2 months of being signed (Art. 31) and will be published in the Aragon official regional bulletin (Art. 32).

In Catalonia, Law 26/2010, governing the legal and procedural system for public administration in Catalonia, devotes Title IX to inter-administrative relations and deals with administration authorities in Catalonia. Said Law's application to relations with other Autonomous Communities, the State, and public bodies in other States and international bodies is set out under the Fourth Additional Provision, which remits to Arts. 110 and 111, devoted respectively to the form and content of agreements and protocols and to the procedures and particular file in question. This regulation is, therefore, far less ambitious, as it is less direct and does not address head-on the matters dealt with in our study.

Conclusions

As we have seen, there are a variety of reasons that have hindered horizontal relations between Autonomous Communities, which pose a threat to the future of said relations and which need to be dealt with: (a) lack of flexibility in constitutional and statutory norms, which has led to the informal practice of using "protocols"; said lack of flexibility has an effect on regional Parliament intervention and on the national Parliament's capacity to change the status of protocols; (b) lack of transparency or public dissemination of the agreements signed, hindering awareness and understanding thereof, as well as access to them; and particularly (c) lack of political will on the part of the Autonomous Communities when dealing with one another. Without such a will, legislative reform is unlikely to be able to solve the problems that have arisen.

Over the last few years, a shift has been in evidence, although this has been due more to direct Autonomous Community involvement in European Union institutions than to reform of the Statutes of Autonomy. Even though horizontal relations were not a priority for those who drafted the Statutes in 2008, said Autonomous Communities did begin to engage in a practice that has spread and has led to the creation of the Conference of Autonomous Community Governments.

There is a legal framework (which, in large measure, has emerged from the Statutes and from Constitutional Court jurisprudence) that acts as a restriction to be taken into account when addressing regulation of the issue of horizontal cooperation relations: (a) the inalterability of control over competences; cooperation relations affect the exercise of competences, in addition to which national competences may not be extended at the expense of Autonomous Community competences, nor may any Autonomous Community exercise its own competences at the expense of another Autonomous Community; and (b) the voluntary nature of

cooperation that is reflected in the inability to force anyone to cooperate and also by one party not being able to veto or prevent another from cooperating.

In basic terms, the legal challenges that must be faced if horizontal relations are to improve are (a) setting up bodies for cooperation relations (conferences of Autonomous Community Presidents, sectorial conferences to deal with specific matters) and their link with existing relations at the vertical scale; (b) regulating the legal system governing agreements in terms of flexibility and avoiding disputes on this point between Autonomous Communities. This involves creating mechanisms to enhance public knowledge and awareness of existing agreements; and (c) restricting parliamentary intervention in agreements to a minimum. Rather than having to ratify or authorise agreements, parliaments should receive information concerning those that have already been signed.

Faced with these challenges, the question concerns what the most appropriate legal mechanisms for regulating cooperation between Autonomous Communities might be. If we are to heed the Constitution and the Constitutional Court, the Statutes provide *one* (but not *the*) suitable mechanism, although at the same time it tends to be accepted that not everything can be regulated by the Statutes: firstly, because norms are general and based on principles such that it corresponds to the Statutes to determine the general basic framework; secondly, because the effectiveness of these rules at a territorial scale is limited such that regulations of a general scope are required. Faced with such a situation, several possibilities emerge, complementary to the statutory provision. Firstly, approval of autonomous laws governing agreements, laws to which some of the reformed Statutes, such as the one recently approved by Aragon, have remittance. This would be an appropriate regulatory mechanism for directing the legal system covering agreements in each Autonomous Community.

Regulating horizontal cooperation relations through a national law would prove more problematic. Indeed, certain authors have already proposed that this should be effected by reforming Law 30/1992 or by approving a Law of Regional Cooperation (organic or ordinary).[23] The latter option is justified due to the need to provide one standard legal mechanism that is common to all Autonomous Communities. However, I do not feel this latter option to be the most suitable legal mechanism in political terms; previous attempts at approving such a law having been viewed by nationalist governments as interference from the State. By contrast, from a legal standpoint, merging under a single law all of the regulation governing cooperation would give rise to a systematic and coherent regulation that would embrace all mechanisms and bodies. The same basic legal objective could also certainly be reached by reforming Law 30/1992, governing the legal system for public administration, and without arousing the same sentiments. Regulating horizontal relations

[23] This latter view is held by Tajadura (2010a), *op. cit.*, pp. 231 and 247 et seq. In our view, unless foreseen in constitutional reform, there is no reason to consider that for the moment the normative category of the organic law should be used since it is not a matter reserved to said category by the Constitution.

through a national law, whatever this law may happen to be, does raise certain reasonable doubts concerning respect towards Autonomous Communities self government (Why should the State legislate over cooperation between Autonomous Communities?) and should always respect the voluntary nature of cooperation between Autonomous Communities (except in instances where the State holds specific competences over coordination, as is the case of health).

Constitutional reform of Art. 145.2 of the SC, which sets out in more cautious and realistic terms relations between Autonomous Communities, is seen by many as the culmination required to consolidate cooperation relations. The advisory opinion issued by the Council of State in February 2006 on constitutional reform specifically refers to two areas of any possible reform: (a) including the duty of all entities with territorial autonomy to cooperate and (b) making relations more flexible, such that the need for any authorisation from Parliament would be removed, "to the extent in which such action corresponds to competences of the Autonomous Communities themselves", whilst maintaining, however, the duty to inform Parliament "and even the Government", as a consequence of the "duty to ensure mutual loyalty".[24] One point that should be remembered, nevertheless, is that in many federal and regional states, such horizontal relations are para-constitutional, which has not, however, prevented them from being implemented.

Without wishing to detract from the merits of the other alternatives, at this particular point in time perhaps the most important thing is achieving a legal-political solution that merges institutionalisation and flexibility, regulating the legal system of cooperation through regional laws, and fostering its implementation in all Autonomous Communities or certain groups thereof via agreements between them. It is the responsibility of the Autonomous Communities involved to draw up their internal rules for the horizontal cooperation bodies that are set up, laying down the procedure for convening meetings and drafting the agenda, alternating the presidency, debating, and taking decisions.

There is nothing to prevent any Autonomous Communities that wish to do so from signing agreements with one another concerning exercise of their competences or accords expressing a commitment to legislate or establish common laws (education, a single market, health services, etc.). Adopting such a bottom-up approach would surely have a knock-on effect amongst other Autonomous Communities and would herald a major step forward in the effort to rationalise the Autonomous State at a time of deep crisis like the present. All that is required is the political will of the Autonomous Communities.

[24] *El Informe del Consejo de Estado* (2006), p. 165, *op. cit*. For the Council of State, ensuring the constitutional and legal appropriateness of said cooperation agreements should fall to judicial and not political bodies.

References

X. Arbós Marín (coordinator), *Las relaciones intergubernamentales en el Estado autonómico. La posición de los actores,* IEA, Barcelona, 2009.

J. Corcuera Stienza, "Colaboración y cooperación en el sistema autonómico español. Reflexiones tras el fracaso de la propuesta de ley general de cooperación autonómica", *Anuario Jurídico de La Rioja*, issue 8, 2002.

Cortes Generals, *Diario de Sesiones del Senado,* VII Legislature, Commissions, issue 147, 12 June 2001.

M.J. García Morales, "Los nuevos estatutos de autonomía y las relaciones de colaboración. Un nuevo escenario, una nueva etapa?", *Revista Jurídica de Castilla y León*, issue 19, 2009.

M.J. García Morales, "Las relaciones de colaboración en el Estado autonómico a los treinta años de la Constitución", in J. García Roca and E. Albertí (coordinators), *Treinta años de Constitución*, Tirant lo Blanch, Valencia, 2010.

I. González García, "La facultad de recalificación de las Cortes Generales ex artículo 145.2 CE: una tesis personal", *Revista Española de Derecho Constitucional*, issue 91, 2011.

J.M. Rodríguez de Santiago, "Artículo 145. Convenios y acuerdos entre Comunidades Autónomas", in M.E. Casas and M. Rodríguez-Piñero (directors), *Comentarios a la Constitución Española. XXX Aniversario*, Wolters Kluwer Foundation, Madrid, 2009.

J.A. Montilla Martos, "Las relaciones de colaboración en el nuevo marco estatutario: bilateralidad y participación", *Revista de Estudios Políticos*, issue 151, 2011.

F. Rubio Llorente and J. Alvarez Junco, (ed), *El Informe del Consejo de Estado* sobre la reforma constitucional Council of State and Centre for Political and Constitutional Studies, Madrid, 2006.

J. Tajadura Tejada, "Los convenios de cooperación ente comunidades autónomas: marco normativo y propuestas de reforma", *Revista d'Estudis Autonòmics i Federals*, issue 11, 2010.

J. Tajadura Tejada, *El principio de cooperación en el Estado autonómico*, 3rd ed, Comares, Granada, 2010.