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**REGIONAL STATE AND AUTONOMY:
THE CASE OF THE KINGDOM OF SPAIN AND THE
BASQUE AUTONOMOUS COMMUNITY**

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ÖZET

Yüksek Lisans Tezi

Bölgesel Devlet ve Özerklik:

İspanya Krallığı ve Bask Özerk Bölgesi Örneği

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Yapısal bağlamda devlet biçimleri ikiye ayrılmaktadır. Bir tarafta tek devlet egemenliğinin, toprağının ve ulusunun varlığını içeren tek yapılı (üniter) devlet modeli, diğer tarafta ise birden fazla devletin birleşmesiyle oluşan ve egemenlik, toprak ve ulus unsurlarının, oluşturulan devlet ile oluşturan devletler arasında paylaşıldığı karma yapılı devlet modeli vardır. Tek yapılı devlet modeli birkaç farklı biçimi içermektedir. Bu farklı biçimlerden birini de bölgesel devlet modeli oluşturmaktadır. Bölgesel devlet modeli hem devletin birliğine ve bölünmezliğine dayanmakta hem de bölgeleri için özerklik hakkını tanımaktadır. Dolayısıyla, bölgesel devlet bölgesel özerklik kavramıyla yakından ilgilidir.

İspanya Krallığı, bölgesel devlet olarak adlandırılabilir, çünkü bölgesel devlet modelinin özelliklerini taşımaktadır. 1978 İspanyol anayasasında İspanyol ulusunun, İspanyol ülkesinin ve İspanyol egemenliğinin birliği ve bölünmezliği ve bölgeler için özerklik hakkı vurgulanmaktadır. İspanya bugün on yedi özerk topluluktan oluşan bir devlettir. Bu özerk toplulukların varlığı, İspanya'nın tek yapılı devlet özelliğini değiştirmemektedir. Bask Özerk Topluluğu, İspanya'nın topluluklarından biridir. Bask Özerk Topluluğu, merkezi yönetim tarafından transfer edilen yetkileri kullanmaktadır. Bask Özerk Topluluğu bölgesel özerklik olarak sınıflandırılabilir.

Bu çalışmada, devlet biçimleri, özellikle bölgesel devlet, ve özerklik kavramı incelenerek, İspanya Krallığı ve Bask Özerk Topluluğu analiz edilmiştir.

Anahtar Kelimeler: 1) Devlet Biçimleri, 2) Bölgesel Devlet, 3) Özerklik, 4) İspanya Krallığı, 5) Bask Özerk Topluluğu

ABSTRACT

Master Thesis

Regional State and Autonomy:

The Case of the Kingdom of Spain and the Basque Autonomous Community

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In terms of structure, state forms can be classified into two types. On the one hand, there is the model of the unitary state that is based on the unity and indivisibility of state sovereignty, territory, and nation. On the other hand, there is the model of the composite state that comes into being with the unification of more than one state and in which the components of sovereignty, territory, and nation are shared between the constituted state and the constituent states. The unitary state has different types, one of which is the model of the regional state. The model of the regional state is based on the unity and indivisibility of state, and recognizes the right of autonomy to its regions. Consequently, the regional state is closely related to the concept of the regional autonomy.

The Kingdom of Spain can be classified as a regional state, because she carries the characteristics of the model of regional state. In the 1978 Spanish Constitution, the unity and indivisibility of Spanish nation, Spanish country, and Spanish sovereignty, and the right of autonomy for the regions are emphasized. Spain is a state consisting of seventeen autonomous communities today. The presence of these autonomous communities does not change the unitary feature of Spain. The Basque Autonomous Community is one of the autonomous communities of Spain. The Basque Autonomous Community uses the competences transferred by the central administration. The Basque Autonomous Community can be described as a regional autonomy.

In this study, the state forms, especially the regional state, and the concept of autonomy are examined through the case studies of the Kingdom of Spain and the Basque Autonomous Community.

Key Words: 1) State Forms, 2) Regional State, 3) Autonomy, 4) The Kingdom of Spain, 5) The Basque Autonomous Community

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OF SPAIN AND THE BASQUE AUTONOMOUS COMMUNITY**

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LIST OF ABBREVIATIONS

BAC	Basque Autonomous Community
BC	Before Christ
CSCE	Conference for Security and Cooperation in Europe
ETA	Euskadi ta Azkatasuna (the Basque country and Freedom)
NATO	North Atlantic Treaty Organization
UN	United Nations

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INTRODUCTION

International Relations is a discipline of the social sciences dealing with a wide-ranging and increasing number of issues concerning world politics. Among those issues state occupies a central place, as many researchers take it as the main and starting-point of their analyses.

The concept of state also constitutes the basis of international law. International law generally classifies states in terms of three criteria: consequences of state sovereignty, scope of state competences, and state structure. This study is related to the last category: state structure.

State structure refers to the form of state. State forms actually reflect differing relations among three basic components of the state: sovereignty, territory, and nation. Although every state has its own characteristic features, there are some common points that enable classifying state forms. This study focuses upon primarily the issue of *forms of state*. This issue will be thoroughly examined in the first chapter. In that chapter, the two broad categories of state that are the unitary state and the composite state will be analyzed along with their various types. The unitary state mainly involves the varieties of the centralist unitary state, the unitary state with local governance, and the regional state, while the composite state involves those of the personal union, the real union, confederation, and federation. The aim of the first chapter is to show that the regional state is a form of unitary state with two distinct elements: the unity of the state and the autonomy of its regions. The emphasis on the unity of the state aims at the preservation of the unitary characteristics of the state, making the regional state as a type of unitary state. As the regional state is often confused with the federal state, this chapter will also look into the similarities and differences between these two types of states and argue that, notwithstanding their similarities, the regional state and the federal state are not the same.

The feature that separates the regional state from other types of the unitary state is the recognition of autonomy of regions. These autonomous regions are examples of territorial autonomy which is a dimension of the concept of autonomy. In this context, the first chapter also examines the concept of autonomy, especially regional/territorial autonomy, in order to help understand the form of the regional state.

The regional or the territorial autonomy is seen as the most difficult form of autonomy to get. The reason behind this situation is usually the anxiety of the state about the possibility that the residents of the autonomous region may demand to use the right of self-determination with a view to seceding from the state and, thus, gaining independence. Consequently, it is important to examine the concept of self-determination so as to understand the differences between self-determination and autonomy. These will be also explained in the first chapter.

On the other hand, as mentioned above, every state has its own *sui generis* features and hence the need to examine each on its own. In this study, the case of *the Kingdom of Spain* will be examined as a regional state which is a sub-form of the unitary state. That case is intriguing and rich in that Spain is one of the few regional states, if not the only one, that has as many as seventeen autonomous communities. That system of autonomous communities came into being with the 1978 Spanish constitution. Today's state structure of Spain, as other states, reflects her historical background. During the history some regions of Spain, such as the Basque country and Catalonia, struggled with the Spanish administration to re-gain their autonomy whenever they lost it, and have managed to preserve their autonomous structures uninterruptedly only since 1978. The important points related to the autonomous structures in Spanish history are going to be explained in the second chapter.

Accommodating monarchy and parliamentary system, Spain became a parliamentary monarchy with the 1978 constitution. So as to show that the Kingdom of Spain is not a federal state, the parliamentary system of Spain is going to be examined. In this way, the role of the autonomous communities in the parliamentary

system is going to be clarified and it is going to be argued that the autonomous communities do not have the position of the federate states in the federal state structure.

Spain acknowledges her diversity by recognizing the rights of autonomy for her regions. However, Spain keeps her unitary feature. The second chapter examines the Spanish state structure in detail along with the System of Autonomous Communities. The aim of this chapter is to show that the Kingdom of Spain carries the features of the regional state with her seventeen autonomous communities.

Spain's perspective on language is also affected by the regionalism. Every autonomous community has the right of possessing and using a second official language at the regional level besides Spanish. Yet, regional official languages do not change the official position of Spanish at the regional and national levels. The resultant dominant position of Spanish leads to the common impression that Spain is a monolingual country. The linguistic system of Spain is also going to be explained in the second chapter.

In Spain, there have been autonomous regions since 1978. They are good examples to analyze the concept of territorial autonomy. However, given the limits of space, only one of them, *the Basque Autonomous Community (BAC)*, is going to be examined in the third chapter of the study. After the approval of the 1978 constitution, the Basque Autonomous Community was set up in 1979 with the approval of the Statute of Autonomy of Basque Country by the Basque parliament, the Spanish national parliament, and the residents of the BAC in a referendum. In other words, the Statute of Autonomy of Basque Country is the law that set up the autonomous structure of the BAC. The Basque Autonomous Community has its own legislative and executive organs and uses the competences transferred by the central administration. The powers of the BAC are valid only within its borders. The BAC does not represent a kind of state within or outside Spain. Therefore, the aim of the third chapter is to demonstrate that the Basque Autonomous Community can be

defined and described as a regional autonomy. This chapter will also explain the position of the Basque language in the BAC.

Following the conceptual framework in the first chapter, the Spanish state structure in the second chapter, and the structure of the BAC in the third chapter, the conclusion part is going to evaluate the key analyses and arguments put forth in the previous chapters with a view to the aims of this study.

THE FIRST CHAPTER

THE REGIONAL STATE AND AUTONOMY

State is a preeminent actor of international relations. There are various definitions of state but basically it can be defined as an entity which has sovereignty and juristic personality formed as a result of legal and political organization of a settled community.¹ Consequently, the concept of state contains three components: sovereignty, territory, and nation. In this framework, *state* is an organized political system having *sovereignty* over a defined *nation* and certain *territory*.²

In terms of structure, two *forms of state* can be identified: *unitary state* and *composite state*. Being a unitary state or a composite state is a political preference. Historical, social, economical, geographical, cultural factors and the need for security have an effect on this preference.³

On the other hand, the concept of *autonomy* is an issue related to the form of state. The presence of an autonomous structure in a state leads to the construction of the state structure in a particular way. Depending on the nature of their autonomous structures, some unitary states prefer to be organized as a *regional state* which is a type of unitary state. The regional state is an outcome of the increasing tendency of regionalism.⁴ The regions possessing different culture/identity within the unitary state increasingly ask for different treatment from the state to live and to keep alive

¹ A. Şeref Gözübüyük, **Anayasa Hukuku**, Turhan, Ankara, 2002 (**Anayasa Hukuku**), p. 13, For further information about the concept of state, see Ali Yaşar Sarıbay, **Global Bir Bakışla Politik Sosyoloji**, Alfa, İstanbul, 2000, pp. 114-7, Cemal Bali Akal, **Sivil Toplumun Tanrısı**, Engin Yayıncılık, İstanbul, 1995, pp. 25-30, 104-26, Gencay Şaylan, **Değişim Küreselleşme ve Devletin Yeni İşlevi**, İmge Kitabevi Yayınları, Ankara, 1995, pp. 15-8.

² Bilge Umar, **Hukuk Başlangıcı**, Dokuz Eylül Üniversitesi Hukuk Fakültesi Döner Sermaye İşletmesi Yayınları, İzmir, 1997, pp. 259-62, Colm Campbell et al., "The Frontiers of Legal Analysis: Reframing the Transition in Northern Ireland", **The Modern Law Review**, Vol.66, No.3, May 2003, p. 328.

³ Hüseyin Pazarcı, **Uluslararası Hukuk, II. Cilt**, Turhan, Ankara, 2003, pp. 97-8, Atilla Nalbant, **Üniter Devlet**, Yapı Kredi Yayınları, İstanbul, 1997, pp. 14, 28, 227-9, 341-2.

⁴ Andrew Evans, "Regional Dimensions to European Governance", **International and Comparative Law Quarterly**, Vol.52, January 2003, p. 21.

their distinctiveness. In turn, the unitary state sometimes responds by creating a new administrative-political unit (*autonomous region*) which is under its jurisdiction but above cities.⁵ However, as will be explained below, the concept of autonomy has a number of dimensions, and some types of autonomy do not change the structure of state.

1.1. State Forms

As mentioned above, there are two types of state forms: unitary state and composite state. Beyond this simplified categorization the forms of state show diversity because there is not one form of unitary or composite state. On the contrary, there exist further sub- categories of unitary and composite state.

1.1.1. The Unitary State

The concept of *unitary state* refers to the structure in which authorities of the state are not shared with any other state at both lower and upper levels. This means that people residing on a territory of a country are subject to a single state sovereignty, and that internal and external sovereignties are not shared with any other state.⁶ Therefore, the unitary state is defined with the formula that the state is an indivisible unity with its country (territory) and nation (community). In this sense, the unity and indivisibility of sovereignty, nation, and country constitute the unity and indivisibility of state.⁷ Turkey, Greece, and France can be given as examples of the unitary state.⁸

⁵ Nalbant, p. 14.

⁶ Gözübüyük, **Anayasa Hukuku**, p. 18, Markku Suksi, “Keeping the Lid on the Secession Kettle – a Review of Legal Interpretations concerning Claims of Self-Determination by Minority Populations”, **International Journal on Minority and Groups Rights**, Vol.12, 2005, p. 193.

⁷ Nalbant, pp. 14, 64-5.

⁸ For example, according to Article 3 of the 1982 Turkish Constitution, the state of Turkey is an indivisible unity with her country (territory/fatherland) and her nation. Seyfullah Edis et al., (eds.), **Türkiye Cumhuriyeti Anayasası ve İlgili Kanunlar**, Dokuz Eylül Üniversitesi Hukuk Fakültesi Döner Sermaye İşletmesi Yayınları, Ankara, 1993, p. 11. This article refers to the characteristic of Turkey as a unitary state. For more information, see Zafer Gören, **Anayasa Hukukuna Giriş**, Barış Yayınları Fakülteler Kitabevi, İzmir, 1997, p. 85 and Ergun Özbudun, **Türk Anayasa Hukuku**, Yetkin Yayınları, Ankara, 1989, p. 64.

It is possible to organize the unitary state in various ways. And depending on its internal organization, the unitary state may take three forms: the centralist unitary state, the unitary state with local governance, and the regional state (in other words, the unitary state with many regions).⁹

1.1.1.1. The Centralist Unitary State

Some unitary states choose to organize themselves in accordance with the centralist understanding. In the centralist unitary state, all competences and responsibilities are collected at the center. The duties of the central administration are performed by the officials at the center and by the appointed officials at the provinces. There is a hierarchical relationship between these officials and the central administration. Hence, they do not act independently from or outside the authority of the central administration and they do what the central administration wants. In this way, the central authority of state embraces everyone and everywhere in the country.¹⁰

There are certain benefits that are associated with the centralist unitary state. First of all, it provides the unity of state administration. Secondly, the expertise and finance needed for carrying out public services efficiently are provided more easily. Thirdly, the cost of services is reduced. Lastly, the distribution of services over the country takes place in a fairer manner.¹¹

On the other hand, there are also some drawbacks of the centralist unitary state. Firstly, this structure is burdened with increasing bureaucracy because of the need of provincial officers to continuously correspond with the center as the authority to take decisions belongs to the center. Secondly, it is difficult to rightly evaluate and determine local needs from a distance. Lastly, there is always a possibility that the central administrators may provide privileges to their own

⁹ Gözübüyük, **Anayasa Hukuku**, pp. 18-19.

¹⁰ Nalbant, pp. 28, 32-3, 36-8, Erdoğan Teziç, **Anayasa Hukuku**, Beta Basım Yayım, İstanbul, 2004, pp. 123-4.

¹¹ A. Şeref Gözübüyük, **Yönetim Hukuku**, Turhan, Ankara, 1998 (**Yönetim Hukuku**), p. 36.

constituencies in the distribution of public services.¹² This leads to the impairment of fairness as far as the localities are concerned. Therefore, states can prefer to choose to be organized in the model of the unitary state with local governance in order to eliminate the disadvantages of the centralist unitary state.

1.1.1.2. The Unitary State with Local Governance

The unitary state with local governance is a structure formed for conveying services to people more easily/rapidly and for decreasing the drawbacks of the centralist unitary state. In the unitary state with local governance, the administrative services of the state in certain localities, along with the central administration, are carried out by the administrators elected by the people residing there. This leads to the emergence of new self-governing public entities such as municipalities or villages.¹³ In this way, the central administration and local administrations exist together.

Local governance is particularly designed to meet local needs. It represents a different identity (a jurisprudential personality) and has different duties, competences, property, and goals from the central administration. However, the presence of the local governance in the unitary state does not eliminate the unitary feature of the state because the local administration organs have to realize their activities under the laws enacted by the central administration. Thus, their competences are limited and they are always accessible to the control of the central administration.¹⁴

The unitary state with local governance is a structure formed for bringing services to the people more efficiently and hence for coping with the drawbacks of the centralist unitary state. For instance and above all, bureaucracy is significantly reduced and services are realized faster in that type of the unitary state. Yet, this does not mean that the latter is all trouble-free. Some noteworthy disadvantages of the

¹² Gözübüyük, **Yönetim Hukuku**, p. 37.

¹³ Teziç, pp. 124-5, Nalbant, pp. 28, 38-40.

¹⁴ Teziç, p. 125.

unitary state with local governance are as follows. Firstly, the institutions of local governance usually have not enough financial resources and technical staff at their disposal. Secondly, the public services transferred to the local governance institutions are not provided fairly overall the country and hence not enjoyed equally by the population. Lastly, it is difficult to constantly supervise and control the practices of the local governments in the area of finance. However, these drawbacks are closely related to the politics and economics of the state and the development level of the locality. The lesser the political and economic level of the state the more troublesome the local governance is.¹⁵

The centralist unitary state constrains the participation of the people in the administration, so it is not very well-suited for a fuller realization of democracy.¹⁶ Thus, for those who regard the participation of the local people in the administration as a necessity, the understanding of local governance is in line with the principles of democracy.¹⁷ In the unitary state with local governance, the principles and policies of democracy are learned, developed and reinforced more efficiently because the political participation is easier relatively and the gains from politics are obtained more rapidly.¹⁸

1.1.1.3. The Regional State (The Unitary State with Many Regions)

Globalization creates a sub-state challenge in two important ways: the politicization of individual identities, and the decrease of the importance/influence of central institutions and structures, and the parallel increase of influence/importance of local structures and institutions.¹⁹ The politicization of individual identities is closely related to the cultural diversity within a state. Cultural diversity involves the distinctiveness of a group in its attitudes, opinions and values, which in turn imbue it

¹⁵ Gözübüyük, *Yönetim Hukuku*, p. 39.

¹⁶ Gözübüyük, *Anayasa Hukuku*, p. 19.

¹⁷ Teziç, p. 125.

¹⁸ Francesc Morata, “Yerel Yönetim ve Yenilikçi Yönetişim: İspanya Örneği”, <http://ipc.sabanciuniv.edu/tr/ArastirmaAlanlari/documents/FrancescMorata.pdf> (10.10.2006).

¹⁹ Sarıbay, p. 103.

with a sense of identity and distinguish it from the other groups in a country.²⁰ In that sense, the sub-state challenge involving particular understandings of identity based on blood, race, language, locality, religion or tradition constitutes a fundamental challenge against the entity of the state in the contemporary world, and has become a source of anxiety for the state as it may bring about the fragmentation of the state's sovereignty and territorial integrity.²¹

The importance of regions possessing a strong culture or sense of identity increased in the 20th century. Along with that the demands of regions for autonomy or self-determination to form a new political space also increased.²² The support for decentralization against the centralist state structure has become widespread.²³ As a result, in the 20th century, some unitary states have chosen to be organized as a unitary state with many regions or a *regional state* by widening the scope of the local governance and by giving autonomy to some of their regions or nationalities²⁴ in order to find satisfactory solutions to the ancient and fundamental demands coming from those regions; to meet sub-state challenges; and to eliminate separatist movements and violent actions of separatist organizations.²⁵ Italy, Portugal and Spain are some examples of the regional state.

In the constitution of a regional state, the unity of nation and the indivisibility of fatherland are emphasized while at the same time the autonomy of nationalities or

²⁰ Tinatin Khidasheli, "Federalism and Consociationalism. Prospects for Georgian State Reform", p. 196, <http://poli.vub.ac.be/publi/orderbooks/federal/09khidasheli.pdf> (20.10.2006).

²¹ Shampa Biswas, "W(h)ither the Nation-state? National and State Identity in the Face of Fragmentation and Globalisation", **Global Society**, Vol.16, No.2, 2002, pp. 175-6, 183, Stephen Tierney, "Reframing Sovereignty? Sub-State National Societies and Contemporary Challenges to the Nation-State", **International and Comparative Law Quarterly**, Vol.54, January 2005, p. 165.

²² Michael Keating, "Regions and the Convention on the Future of Europe", **Jean Monnet Lecture Series**, No.2, 2003 (Regions and the Convention), p. 2, <http://www4.soc.unitn.it:8080/poloeuropeo/content/e57/e130/e355/JML2.pdf> (20.10.2006).

²³ Robert Tannenwald, "Devolution: The New Federalism – An Overview", **New England Economic Review**, May/June 1998, p. 3.

²⁴ Gözübüyük, **Anayasa Hukuku**, p. 19, Suksi, p. 193, Khidasheli, p. 195, Andrés Rodríguez-Pose, and Adala Bwire, "The Economic (In)efficiency of Devolution", p. 12, <http://www.lse.ac.uk/collections/geographyAndEnvironment/research/Researchpapers/rp86.pdf> (22.10.2006), Alexander B. Downes, "Separate States or a State of Autonomies? Regional Autonomy versus Partition after Ethnic Wars", p. 21, <http://www.cgsd.rutgers.edu/Documents/Research%20and%20Publications/downes--full.pdf> (03.03.2006).

²⁵ Teziç, p. 126.

regions is recognized. This sounds contradictory but the constitution combines two opposite elements: the unity of nation and the autonomy of regions. The emphasis on the unity of nation and the indivisibility of fatherland means that the state is a unitary state. Due to the fact that the understanding of one nation is accepted as a whole, nationalities within the regions do not form a people and do not have the right of self-determination. However, every nationality or region has the right of maintaining its own culture.²⁶

In the regional state, the center has its own legislative and executive organs which are elected by the nation, and have the power of jurisdiction over everyone and everywhere in the country. There are generally two assemblies at the center of the regional state: senate and congress. These assemblies are elected by all citizens of the regional state, and the system of autonomous regions does not influence in any way the formation of these assemblies. Therefore, the central parliament (senate and congress) is national. However, every autonomous region has also its own legislative and executive organs which are elected by the residents in the region and have legislative and executive power over the region.²⁷ There is only one assembly in the autonomous region and it only represents the region.

Every autonomous region has an autonomy statute that it enacts within its elected assembly. The statute of the region is *like* a constitution but *not* a constitution in the legal sense of the term. This is so because the national parliament by accepting the autonomy of the regions in the constitution gives the region the competence of preparing its autonomy statute. The statute prepared may need the approval of and cannot be amended by the Spanish parliament. However, it has to be compatible with the constitution as a matter of obligation.²⁸ Consequently, in terms of legal hierarchy the statute is under the constitution. Besides, the regional laws enacted by the regional parliament are subject to the control of the constitutional court.²⁹ Moreover,

²⁶ Nalbant, p. 26, Teziç, p. 126, Ferran Requejo, "National Pluralism and Federalism. Four Potential Scenarios for Spanish Plurinational Democracy", **Perspectives on European Politics and Society**, Vol.2, No.2, 2001, p. 311.

²⁷ Requejo, p. 312, Teziç, p. 127, Nalbant, pp. 26, 232.

²⁸ Teziç, p. 127.

²⁹ Nalbant, pp. 42, 232-3.

since the constitution belongs to the whole nation and concerns everyone, only national parliament has the power of amending the constitution, and autonomous regions cannot intervene to the amendment process.³⁰

In the regional state, there is the unity of judicial jurisdiction. Hence, autonomous regions do not have adjudicatory power. The latter belongs to the center. The center exercises this power via independent courts. The courts in the regions and the rest of the country represent the center and adjudicate on behalf of the center. There is also a constitutional court which checks the compatibility of national and regional laws with the constitution and resolves the disputes between the center and autonomous regions about the limits of competences.³¹

The constitution of the regional state clearly defines the competences of the center and autonomous regions. Some responsibilities such as foreign policy, defense, administration of justice, foreign trade, monetary policy, and maintenance of living standards and social security generally belong to the center.³² Autonomous regions are usually responsible for sport and social activities, environment protection, health, agriculture, education, cultural affairs, and tourism.³³

Regions within the centralist unitary state do not have any competence at the beginning. Following the decision to be organized as regional state, autonomous regions are set up and the center transfers some of its competences to them. While the autonomous regions have the right of using these competences, the central administration always reserves the right to withdraw them. However, for that to happen an amendment in the constitution is required. National parliament can make this amendment without any intervention from autonomous regions because, as

³⁰ Suksi, p. 195.

³¹ Requejo, pp. 311-2, Teziç, pp. 126-7, Nalbant, p. 26.

³² Stanley Henig, and Ulrike Rüb, "Regional Devolution in Europe: Lessons for the UK?", **European Essay**, No.31, 2004, The Federal Trust for Education and Research, p. 13, http://www.fedtrust.co.uk/uploads/Essays/Essay_31.pdf (20.10.2006).

³³ Morata, "Yerel Yönetim ve Yenilikçi Yönetişim: İspanya Örneği".

explained above, autonomous regions cannot participate in constitutional amendments.³⁴

Autonomous region has not got *de jure* existence internationally. Consequently, they are not independent governments or states.³⁵ The autonomous region is a position between state and local governance. It is not a state because it is created constitutionally and its competences are transferred from the center so it does not have sovereignty.³⁶ Also, it cannot be defined as local governance because it has some political competences referring to legislative and executive power over the region.³⁷

The authority in the areas of defense and armed forces belongs to the center in the regional state. Therefore, the latter has only one army. This army is national and is not a combination of regional armies. Autonomous regions do not have any military power and separate army.³⁸

The transfer of authority from the center towards autonomous regions has some positive aspects. First of all, citizen demands are more easily conveyed to the administration. Secondly, services are realized more efficiently. Thirdly, the administration becomes more accountable and transparent as bureaucratic complexity is reduced and citizens' monitoring capacity increases. And lastly, there occurs a significant increase in political participation. Yet, there are also some drawbacks. Firstly, there may emerge a confusion/ambiguity concerning the distribution of responsibilities and functions between the center and the autonomous regions. Therefore, people may not be able to distinguish the responsibilities of the central administration from those of regional administration. This situation can lead to a decrease in the transparency and accountability of the administrations. Secondly, a high cost may emerge for providing coordination between the center and autonomous regions. Thirdly, a close relationship may come about between officials

³⁴ Nalbant, pp. 42, 45.

³⁵ Nalbant, pp. 27, 232.

³⁶ Suksi, p. 195.

³⁷ Nalbant, p. 234.

³⁸ Downes, p. 21.

in autonomous regions and private individuals/local interest groups. This kind of relationship may lead to corruption in the regions. Lastly, the budget of regional administration is usually limited. This situation is likely to bring about medium and long-term economic inefficiency.³⁹

Spain is an example of the regional state. With the 1978 Constitution, she both accepted the unity of nation and recognized the autonomy of nationalities (regions) within her. According to the constitution, Spain is constituted upon the oneness of Spanish nation and the indivisible integrity of shared fatherland. Also, the constitution recognizes the autonomy of regions by accepting them as parts of fatherland and guarantees their autonomy.⁴⁰

1.1.2. Composite State

Composite state is a state form consisting of the integration of more than one state. Some states are united under a new state by protecting their state characteristics mainly, but not only, for security reasons. There are four types of the composite state: the personal union, the real union, confederation and federation (federal state). Federation is the most widespread form of the composite state in today's world.⁴¹

Sui generis state communities such as the British Commonwealth of Nations can also be added to this classification. This community is an entity constituted by Britain, her old colonies, and Australia under the presidency of Great Britain.⁴² Pazarıcı believes that Commonwealth has not got enough capabilities for being a state, since although the members of this community accept the Queen of the United Kingdom as the president, the role of this presidency is symbolic and the states constituting the Commonwealth maintain their independent entities.⁴³ The British Commonwealth developed via a unique complex of cultural, historical, and political

³⁹ Rodríguez-Pose and Bwire, pp. 5-9.

⁴⁰ The case of Spain will be examined in the second chapter.

⁴¹ Gözübüyük, **Anayasa Hukuku**, p. 20, Teziç, p. 128, Nalbant, p. 29.

⁴² Ali Öztekin, **Siyaset Bilimine Giriş**, Siyasal Kitabevi, Ankara, 2001, p. 26.

⁴³ Pazarıcı, pp. 98-9. Nomer agrees with Pazarıcı. Engin Nomer, **Devletler Hususi Hukuku**, Beta, İstanbul, 1990 (**Devletler Hususi**), p. 26.

ties to Great Britain. There is no any formal constitutional arrangement among the states.⁴⁴ These states maintain their relationships in order to benefit from the experiences of Britain in the areas of state and administration.

1.1.2.1. The Personal Union

In a *personal union*, two or more states unite under the shared administration of one monarch (king) but they protect their own authority in the area of international relations. Under this structure, every state protects its own personality as a state and maintains its sovereignty. The personal union is not strengthened by mutual agreements so it is generally limited with the life of the monarch. Prussia-Neufchatel (1707-1857), England-Hanover (1714-1837), Holland-Luxembourg (1815-1890), and Belgium-Independent Congo (1885-1908) were some examples of the personal union in history.⁴⁵

1.1.2.2. The Real Union

In a *real union*, one monarch is the president of two or more states and these states have shared organs in the area of international relations. In this structure, every state protects its internal sovereignty but all states in the union act as part of a whole with the regard to external sovereignty. Consequently, constituent states are free in internal affairs but they are subject to the same legal rules in foreign affairs. The union among states is reinforced by mutual agreements in the real union and this is the difference of the real union from the personal union. Sweden-Norway (1818-1905), Austria-Hungary (1867-1918), and Denmark-Iceland (1918-1944) were some examples of the real union in history. However, it is worth noting that the personal union and the real union disappeared with the decrease of the importance of the monarchies.⁴⁶

⁴⁴ Hurst Hannum and Richard B. Lillich, "The Concept of Autonomy in International Law", **The American Journal of International Law**, Vol.74, No.4, October 1980, p. 860.

⁴⁵ Teziç, footnote: 50 p. 128, Gözübüyük, **Anayasa Hukuku**, p. 20, Öztekin, p. 37.

⁴⁶ Teziç, footnote: 50 p. 128, Gözübüyük, **Anayasa Hukuku**, p. 20, Öztekin, p. 37.

1.1.2.3. Confederation

Confederation is a state form established through an international accord by independent states in order to protect their common interests with a view to preserving their sovereignties. The common interests in question usually involve economic integration and reinforcement of military security.⁴⁷ The states forming the confederation are called as *confederate state*.

Confederate states only abandon some parts of their competences concerning foreign affairs to the assembly of the confederation as the sole organ of the confederation. They carry out their own competences by themselves and maintain their feature of being independent. As a result, the competences of a confederation are limited and related to only common interests, especially those pertaining to defense.⁴⁸

The assembly of the confederation provides the incorporation of confederate states into the decision-making process. It consists of the representatives of confederate states. These representatives are strictly committed to the directives of their own governments. The important decisions are taken only by unanimity in the assembly. Every member state has the right of veto. Besides, the decisions taken by the assembly can be valid only via the ratification of the member states. These decisions are then carried out in the respective jurisdictions of the member states.⁴⁹

Confederation is not a state possessing its own territory and its own nation because the territory of the confederation is the total of the territories of the confederate states, and the nation of the confederation refers to the nations of confederate states. Moreover, there is not any connection like citizenship of confederation between peoples of the confederate states and the confederation.⁵⁰

⁴⁷ Requejo, p. 314.

⁴⁸ Gözübüyük, **Anayasa Hukuku**, p. 20, Teziç, p. 129, Öztekin, p. 38.

⁴⁹ Gözübüyük, **Anayasa Hukuku**, p. 20, Teziç, p. 129, Öztekin, p. 38, Nalbant, p. 29.

⁵⁰ Öztekin, p. 38. Citizenship is the concept that refers to the belongingness of an individual to a state. Consequently, citizenship represents the connection between an individual and a state. It forms a legal basis for the relations between them. Therefore, the absence of citizenship in confederation

Besides, confederate states have the right of separation from the confederation if they wish so. However, for the latter they have to follow the procedures stated in the accord for the separation.⁵¹ For these reasons, confederation does not represent a strong structure. Instability (in functioning of confederation) and the absence of an effective organ (for carrying out the decisions taken by the assembly) can cause disintegration of confederation or can lead to integration of member states under a federal structure⁵² because, as will be seen below, federal structure is stronger than confederation.

1.1.2.4. Federation (Federal State)

Federation as a form of the composite state is widespread in today's world. The USA, Canada, Austria, India, Pakistan, Germany, Malaysia, Nigeria, Venezuela, Uganda, Argentina, and Russia are some examples of federations. A *federation* consists of states united under a shared constitution.⁵³ The states constituting federation are called as *federate state* and the state constituted by these states is named as *federal state*.

In federation, more than one legislative assembly voluntarily transfers some of their competences to a common legislative assembly. This leads to the establishment of a new state: federal state. This state is a unity of states in that federal state has a distinct legal personality from each state forming the unity. In federation, nation is formed by the nations of federate states and territory is composed of the territories of federate states.⁵⁴ Consequently, federalism refers to two state structures. Federal state is a supra-state structure over federate states while federate states are equal entities or subdivisions under federal state.⁵⁵ This is the result of the federal constitution which *de jure* recognizes federate states below

demonstrates the deficiency of connection between citizens of confederate states and confederation. For the further information about the concept of citizenship, see Engin Nomer, **Vatandaşlık Hukuku**, Filiz Kitabevi, İstanbul, 1993, pp. 3-39.

⁵¹ Requejo, p. 315.

⁵² For example, Switzerland Confederation was established by three cantons in 1315 and remained as a confederation until 1848. Then, she was transformed into a federal state at that time. Teziç, p. 129.

⁵³ Teziç, p. 128, Gözübüyük, **Anayasa Hukuku**, pp. 20-1.

⁵⁴ Nalbant, pp. 16, 19, 26, Gözübüyük, **Anayasa Hukuku**, p. 21.

⁵⁵ Hannum and Lillich, footnote: 11 p. 859.

federal state.⁵⁶ In this context, in contrast to confederation, people living in a federate state have two types of citizenship. They are citizens of both federal state and one federate state.⁵⁷

The use of jurisdiction is important for states because it demonstrates the sovereignty right of a state over its country.⁵⁸ In other words, jurisdiction stems from the sovereignty right of a state and refers to the authority of the state's decision-making and adjudicatory power on its territory.⁵⁹ In this sense, the federate state continues to have the right of jurisdiction under the federal structure as it continues being a state and maintains its internal sovereignty. Federate state has the power of jurisdiction over its own territory while federal state has the power of jurisdiction over the whole territory of federation. As a result, both federal state and each federate state have its own juristic personality, its own constitution,⁶⁰ and its own legislative, executive and judicial organs.⁶¹ This two-dimensional structure put the federation in the category of the composite state.

Federation is based on a constitution. As soon as the federal constitution enters into force, the international competences of federate states come to an end.⁶² Therefore, federal state is the one that is recognized internationally. Its central authority represents the whole state in all kinds of foreign relations and has the sole authority of entering into legal agreements at international level. However, although the use of external sovereignty belongs to federal state, the internal use of state sovereignty is divided between federal state and federate states,⁶³ because internal sovereignty of each federate state is recognized and protected in the federal constitution. Furthermore, every federate state continues to be a state under the

⁵⁶ Mariely López-Santana, "Having a 'Say' Without Having to 'Pay'? The Differential Effect of Soft Law on Intra-governmental Relations", Paper presented at the "Governing Work & Welfare in an Enlarged Europe" Conference, University of Wisconsin, Madison, May 2006.

⁵⁷ Gözübüyük, **Anayasa Hukuku**, p. 21.

⁵⁸ Aysel Çelikel and Engin Nomer, **Devletler Hususi Hukuku**, Beta, İstanbul, 1990, pp. 201-2.

⁵⁹ Nomer, **Devletler Hususi**, pp. 393, 412.

⁶⁰ Gözübüyük, **Anayasa Hukuku**, p. 21.

⁶¹ Khidasheli, p. 197.

⁶² Teziç, p. 130.

⁶³ Pazarcı, pp. 100-2.

federal structure.⁶⁴ In this sense, federalism enables diverse states to come together and to form a strong unity while preserving their own identities.⁶⁵

The roles and competences of federal state and each federate state are defined and guaranteed in the federal constitution.⁶⁶ As a result, federal state and each federate state use their competences as a matter of constitutional right.⁶⁷ The main aim in determining the constitutional competences of federate states and federal state is to provide a smooth and stable relationship between the federate states and federal state⁶⁸ and, thus, to decrease the probability of conflict/s between the respective roles and powers of each.⁶⁹ Nevertheless, there is also an independent court at the federal level in order to solve the disputes between federate states and federal state arising from the exercise of competences.⁷⁰

Federal state has responsibility in the areas of national security, foreign relations, monetary system, external trade, citizenship, immigration, and the protection of property rights. Federate states, on the other hand, have authority as regards public utilities, administration and enforcement of state laws and programs, state and local infrastructure, health, and education.⁷¹

There are two guiding principles in the organization of the federal state: autonomy and participation. The independence of federal state and federate states,

⁶⁴ Teziç, p. 130.

⁶⁵ Amaresh Bagchi, "Rethinking Federalism: Changing Power Relations between the Center and the States", **Publius: The Journal of Federalism**, Vol.33, No.4, Fall 2003, p. 21.

⁶⁶ Khidasheli, pp. 197-8.

⁶⁷ Roger B. Myerson, "Federalism and Incentives for Success of Democracy", **Quarterly Journal of Political Science**, Vol.1, 2006, p. 6.

⁶⁸ Patricia Hogwood et al, "Regional Actors and European Policy Making: Lessons for the UK?", **Manchester Papers in Politics: Devolution and European Policy Series**, No.7, 2003, p.13, http://www.socialsciences.manchester.ac.uk/politics/publications/working_papers_docs/manchester_working_papers/MPP082003.pdf (22.02.2007).

⁶⁹ Jenna Bednar et al, "A Political Theory of Federalism", p. 11, <http://www-personal.umich.edu/~jbednar/Pubs/befwbib.pdf> (20.10.2006).

⁷⁰ Henig and Rüb, p. 9.

⁷¹ Members of the Staff of the Forum of Federations, "Federal Options and Other Means of Accommodating Diversity", The Forum of Federations, pp. 8, 12, <http://www.forumfed.org/publications/pdfs/Federal-Option-18Feb2005-e.pdf> (20.10.2006).

and the coordination between them can be provided only by means of these principles.⁷²

The principle of autonomy involves that federate states have their own competences and use these competences without any intervention of the federal state.⁷³ The autonomy of federate state is different from the autonomy of a region within the regional state because the origin of federate state's competences is not based on the will of the federal state. On the contrary, it depends on the federate state's own constitution. This means that a federate state government uses the sovereignty entrusted by its own people. Thus, unlike autonomous region of the regional state, federate state does not use the political and administrative competences transferred by federal state. Therefore, the federate state has its own power from the beginning (*ab initio*).⁷⁴

Autonomy divides jurisdiction between two governmental levels. However, federalism is more than such division, because federate states need to be incorporated into the center (federal state). Therefore, the principle of participation gets importance in the federal structure.⁷⁵ In this context, participation refers to the representation of federate states within policy-making organs at the federal level.⁷⁶ The participation form of federate states within the federal state organs is determined by the federal constitution.⁷⁷ The legislative organ of federal state has generally two assemblies. One assembly represents the people of federal state as a whole regardless of federative distinction. Yet, in the other assembly, each federate state is represented in equal numbers.⁷⁸

⁷² Ademola Ariyo, "Theories of Federalism", Fiscal Policy and Growth in Africa: Fiscal Federalism, Decentralization and the Incidence of Taxation, Ad-Hoc Expert Group Meeting, Economic Commission for Africa, 7-9 October 2003, UNCC, Addis Ababa, p. 1, <http://www.tamilnation.org/conflictresolution/federalism/ariyo.pdf> (04.02.2007).

⁷³ Teziç, pp. 131-2, Suksi, pp. 193-4.

⁷⁴ Teziç, p. 131, Nalbant, p. 41.

⁷⁵ López-Santana, p. 16, Tom Kent, "A Short Path to Revitalized Federalism", Constructive and Co-operative Federalism?, A Series of Commentaries on the Council of the Federation, No.13, 2003, Institute of Intergovernmental Relations and Institute for Research on Public Policy, p. 2, <http://www.irpp.org/miscpubs/archive/federation/gibbins.pdf> (22.10.2006).

⁷⁶ Teziç, pp. 131-2.

⁷⁷ Khidasheli, p. 197.

⁷⁸ Suksi, pp. 193-4.

The legitimacy of federation depends on the participation of federate states within the decision making process, because when federate states are represented in the federal state organs, their confidence to federal state also increases. In other words, federate states are to see themselves as a part of federation only through the principle of participation.⁷⁹

On the other hand, if there arises a need for a change in the federal system, this can be realized only through constitutional amendments, which require the participation and consent of both central authority and federate states.⁸⁰ Thus, the federal constitution requires the equal participation of states within the constitution-making process,⁸¹ because the federal constitution determines both the structure of federal state and the distribution of authority which federate states will be subject to. This shows that the distribution of competences is not single-handedly performed by the federal state.⁸²

A federal state can emerge via integration or separation. Some states using their competences freely at both national and international level approve the transfer of their international competences to a supra-state structure (a federal organization) believing that they will not be able to exercise their own competences in this area due to several reasons. The reasons are various. These are usually the presence of a military threat, the formation of a wider economic market, the elimination of internal chaos, and the mutual demand of states for establishing a social order.⁸³ Under such circumstances, federal state becomes the unifying structure for a cluster of states.⁸⁴ On the other hand, some federal states emerge via separation. Under the pressure of ethnical, cultural and religious factors, the regions or provinces within a unitary state

⁷⁹ Thomas Fleiner, "The Dynamic Approach", International Conference of Federalism, Brussels, Belgium, 3-5 March 2005, pp. 2, 5, 11, <http://www.federalism.ch/files/documents/DynamicApproach.pdf> (21.04.2007).

⁸⁰ Khidasheli, p. 198, Suksi, p. 194.

⁸¹ Fleiner, p. 14.

⁸² Nalbant, p. 45.

⁸³ Teziç, pp. 128-30.

⁸⁴ Ariyo, p. 2.

may divide the state and get united under a federal structure in order to protect their own distinctive features.⁸⁵

Federation as a form of the composite state is regarded as a viable option or as a necessity in the organization of states. As explained above, federative structures have some common features. However, every federation should be considered as a different unit because it can carry *sui generis* characteristics.

1.1.2.4.1. Comparison of Federal State and Regional State

One may think that the regional state is similar to federal state or that the regional state has some federative characteristics. However, when some of their components are examined, it is seen that they are different from each other.

First of all, it should be clarified that the regional state is a unitary state because it embodies the unity and indivisibility of sovereignty, nation and country. The presence of autonomous regions does not harm its unitary feature because autonomous regions are not independent territory. Those regions are parts of the country; their residents do not form a separate nation so they are included in the nation of the state; and autonomous status does not involve sovereignty over the region so autonomous regions never share sovereignty of the regional state. On the other hand, federal state is a composite state consisting of federate states. Federate states form the federal state without losing their feature of being a state. While they transfer only their external sovereignty to federal state, federate states maintain their internal sovereignty over their own territories. Also, federal country is the totality of territories of federate states. Every federate state has its own nation or people so the nation of federal state is the aggregation of nations of federate states.

Furthermore, autonomy in the regional state is different from autonomy of federal states. In case of the regional state, autonomy is given to region/s after the formation of the state. In this context, the central administration always has the right

⁸⁵ Teziç, pp. 128-30, Members of the Staff of the Forum of Federations, p. 9.

of withdrawing autonomy. However, federate states are united under the federal structure by preserving their autonomies. This autonomy already belongs to federate state; it is an inherent constitutive feature of it. Since federate states' autonomy is not given by the federal state, it cannot similarly be taken back.

Moreover, every federate state has its own constitution, while the autonomous region has an autonomous statute which is not a constitution. Also, the constitution of federal state can be amended only by the participation and consent of federate states. However, in the regional state autonomous regions do not participate in the amendment process of the constitution. The differences in question are due to the differences in representation. In federal state one of the assemblies at the centre equally represents federate states, while the second assembly represents the whole nation of the federal state regardless of federative fragmentation. However, regional perspective is not adopted at all while forming the assemblies of the regional state. Instead, they are constituted by the whole nation of the regional state regardless of regional fragmentation. Therefore, in the amendment process of the constitution, there is no need for approval of autonomous regions whereas federate states influence that process via the assembly in which they are represented.

In addition, in the regional state, there is the unity of adjudicatory power and it belongs to the centre of the regional state. Hence, autonomous regions do not have judicial authority in their jurisdiction. However, federate states have independent adjudicatory power in their respective jurisdictions.

Lastly, in federal state, people have two kinds of citizenship: citizenship of federal state, and citizenship of one federate state. Yet, in the regional state, there is one type of citizenship, which is the citizenship of the regional state. Thus, the residents in autonomous regions do not have regional citizenship.

1.2. Autonomy

Autonomy is not a new idea. The concept has become part of political life with the emergence of the issue of minorities during history.⁸⁶ The origin of the term of autonomy goes back to the Greek words of *auto* (self) and *nomos* (rule of law).⁸⁷ For Carolyn McLeod, “...*autonomy ...refer[s] to demonstrating an ability to govern oneself, to acting rationally, to having certain rights, to choosing freely, et cetera.*”⁸⁸ However, autonomy does not mean independence.⁸⁹ It just enables a group to maintain its identity, to have a formal place and to reinforce its values.⁹⁰

Many states have diversity in terms of ethnicity, religion and/or language within their territorial borders. This diversity may include the groups who feel different from the majority, such as minorities or nationalities. The state finding itself in the latter position may adopt one of the following opposite approaches: to eliminate or to accommodate the diversity. Methods for eliminating national diversity contain forced displacement, genocide and cultural assimilation. In history, some states resorted to these methods having regarded national diversity as a source of instability and conflict for their states. The aim of these methods was to impose the identity of the majority group upon the minorities. For realizing this aim, some tools such as industrialization, education, the imposition of a single language, the reconstruction of the history of the state, sport, and the media were used.⁹¹

On the other hand, the second approach involves the accommodation of national diversity in existing institutions and decision-making processes in order to

⁸⁶ Jane Wright, “Minority Groups, Autonomy, and Self-Determination”, **Oxford Journal of Legal Studies**, Vol.19, Winter 1999, p. 606. The minority is a group in a state feeling itself different from the majority in the sense of race, language, religion, and/or culture. For further information, see Aysel Çelikel, **Yabancılar Hukuku**, Beta, İstanbul, 1993, pp. 23-4.

⁸⁷ Natalia Loukacheva, “On Autonomy and Law”, p. 3,
http://www.globalautonomy.ca/global1/servlet/Xml2pdf?fn=RA_Loukacheva_AutonomyLaw
(02.03.2007)

⁸⁸ Carolyn McLeod, “How to Distinguish Autonomy from Integrity”, **Canadian Journal of Philosophy**, Vol.35, No.1, March 2005, p. 108.

⁸⁹ Par Olausson, “Autonomy and the European Island Regions”, p. 4,
http://www.ikzm-d.de/addons/pdfs/31_Olausson2002.pdf (22.02.2006).

⁹⁰ Caroline E. Foster, “Articulating Self-Determination in the Draft Declaration on the Rights of Indigenous Peoples”, **European Journal of International Law**, Vol.12, No.1, 2001, p. 153.

⁹¹ Requejo, pp. 307-8.

provide the stability of the state.⁹² In this way, the state meets the demands of minority groups by accommodating these demands through various political and institutional mechanisms.⁹³ And integration of these groups into social, economic and political life is facilitated while protecting their distinct identities.⁹⁴ Consequently, autonomy is a product of accommodation policies aimed at the preservation of the distinct identities of groups who feel themselves different from the majority.

Autonomy is a multi-dimensional concept. Şahin mentions three forms of autonomy. The first one is *cultural and functional autonomy* and it refers to the rights for ethnic groups within a state to have separate schools at various levels (from primary school to university), self-governing religious institutions, and social organizations. The second form is *local autonomy* and it involves autonomous governance for all local administration institutions within a state regardless of whether any ethnic inspiration exists. The third and last form is *regional autonomy*. The regional autonomy occurs when a state gives autonomous status to a region where an ethnic group forms a majority although it is a minority in the state as a whole.⁹⁵ In this context, the regional autonomy refers to the right to exercise a limited power over provincial territorial borders.⁹⁶ Hence, autonomous regions possessing some ethnic or cultural distinctiveness have the independence of action at the domestic level.⁹⁷ The regional autonomy is different from other forms of autonomy because it is territorial while cultural and local autonomy are non-territorial.⁹⁸ The regional autonomy combines ethnic inspirations with territory.

It is not easy to define the regional autonomy over a certain territory. To that end, Hannum and Lillich identify five principles of a fully autonomous territory.

⁹² Requejo, pp. 307-8.

⁹³ Biswas, p. 183.

⁹⁴ Members of the Staff of the Forum of Federations, p. 7.

⁹⁵ Mustafa Şahin, *Avrupa Birliği'nin Self-Determinasyon Politikası*, Nobel Yayın Dağıtım, Ankara, 2000, p. 29.

⁹⁶ Steven C. Roach, "Minority Rights and an Emergent International Right to Autonomy: A Historical and Normative Assessment", *International Journal on Minority and Group Rights*, Vol.11, 2004, p. 411.

⁹⁷ Steven Wheatley, "Deliberative Democracy and Minorities", *European Journal of International Law*, Vol.14, No.3, 2003, p. 521.

⁹⁸ Olausson, p. 4.

Firstly, there should be a regionally elected body. This body should have some independent legislative power but the extent of this power should be limited constitutionally. The body's authority should cover some local matters such as health, education, social services, local taxation, trade and environmental protection. However, the decisions of that regional body cannot be inconsistent with the constitution of the state. Secondly, there should be a chief executive elected regionally. This regional executive should implement regional and national laws. Thirdly, there should be a regional independent judiciary. The extent of this organ's competence should be limited to regional matters. Fourthly, the statute of autonomy should not involve the competences of the central government. Certain issues such as foreign relations, national defense, customs, immigration, security of borders, energy, and general economic policy belong to the central government, and the regional autonomous government should not intervene to the policies related to these issues. Moreover, only the central parliament has the power of making amendments in the constitution of the state. Lastly, there should be a consistency and continuity in the share of competences between the central government and regional autonomous governments.⁹⁹

These principles can provide a ground for defining an autonomous structure as a regional autonomy. However, it should not be forgotten that these principles are not binding or obligatory components to identify a region as an autonomous entity and that all characteristics assumed by these five principles may not exist in a regional autonomy altogether. For instance, a state can give limited autonomy to one of its regions and this autonomy can be defined as the regional autonomy in the constitution, although it does not contain all characteristics assumed by these five principles.

It may appear that it is not too difficult to form autonomous regions within states possessing regional diversity. However, this does not reflect the reality. Given that the regional autonomy gives considerable authority to the regional administration over the region, states believe that regional/territorial autonomy has a

⁹⁹ Hannum and Lillich, pp. 886-7.

potential to threaten the territorial integrity of a state.¹⁰⁰ In fact, history has shown that the regional autonomy has sometimes led to the formation of new states as the regions with autonomy have later got their independence. Therefore, autonomy has taken on an inflammatory meaning and the efforts for obtaining autonomy are seen as a threat to the territorial integrity of the state.¹⁰¹ In this context, it can be said that the regional autonomy is the most difficult form of autonomy to get due to the fear of secession.¹⁰²

However, faced with the prospects of either losing a part of the country via secession or having a perpetual problematic region, a state possessing regional diversity may prefer to give autonomous status to this part in a loose structure to be able to maintain its integrity and stability.¹⁰³ It can prevent the outbreak of a civil war or decrease secessionist tendencies.¹⁰⁴ At this point, it can be said that the post-Franco Spain is a good example because she succeeded to reduce violent demands for secession by establishing the system of autonomous communities.¹⁰⁵

Indeed, there are certain benefits that are associated with the regional autonomy. Firstly, it provides administrative power for minorities which have otherwise little chance of making an influence on the administration of the state

¹⁰⁰ Li-Ann Thio, "Developing A 'Peace and Security' Approach Towards Minorities' Problems", **International and Comparative Law Quarterly**, Vol.52, January 2003, p. 119.

¹⁰¹ Wright, pp. 607, 614.

¹⁰² Şahin, p. 29, Ray Hudson, "Regional Devolution and Regional Economic Success: Enabling Myths and Illusions about Power", A revised version of a paper first prepared for the 30th Anniversary Conference of the Establishment of the Geography Institute, Roskilde University, "Geographies of Power, the Power of Geography", Roskilde, October 26, 2004, pp. 6-7, http://eprints.dur.ac.uk/archive/00000050/01/Hudson_regional.pdf (24.01.2007). Secession refers to the situation where one part or region of a state gets separated from the scope of state's authority or sovereignty by changing the state's borders. Therefore, since secession involves a claim for territory, it is a challenge to the state's authority. See Christopher H. Wellman, "A Defense of Secession and Political Self-Determination", **Philosophy and Public Affairs**, Vol.24, No.2, Spring 1995, p. 144.

¹⁰³ Şahin, p. 29, Hudson, pp. 6-7.

¹⁰⁴ Helga Malmin Binningsbø, "Consociational Democracy and Postconflict Peace. Will Power-Sharing Institutions Increase the Probability of Lasting Peace After Civil War?", Paper prepared for presentation at the 13th Annual National Political Science Conference, Hurdalsjøen, Norway, 5-7 January, 2005, p. 9, <http://www.statsvitenskap.uio.no/konferanser/nfkis/cr/Binningsbo.pdf> (05.04.2007)

¹⁰⁵ Benedict Latto, "Governance and Conflict Management: Implications for Donor Intervention", **Crisis States Programme Working Papers Series**, No.9, 2002, Development Research Center, Development Studies Institute, p. 5, <http://www.crisisstates.com/download/wp/WP9BL.pdf> (20.10.2006).

through parliamentary representation. Secondly, it helps minorities, nationalities or ethnic groups to protect their culture. Thirdly, it may reduce the demands for secession. Fourthly, the escalation of a regional crisis can be prevented, as autonomy gives the region the chance of resolving the crisis and the associated problems itself. Lastly, autonomous regions, if they prove to be successful at administration and protecting identities, can increase the legitimacy of the state.¹⁰⁶

On the other hand, there are some possible risks of the regional autonomy. First of all, it can reinforce the existing cleavages among ethnic identities. This can jeopardize the social harmony and integrity. Secondly, it may trigger a tension between richer and poorer regions, because richer regions generally do not want to carry the burden of poorer regions while poorer regions demand more support of richer regions. Thirdly, some groups or communities, who see themselves as minority or nationality and do not have autonomous status, may organize and demand for autonomous structure. This can continuously pressure the state to set up new autonomous regions. Fourthly, destabilization can emerge at national level because there is a probability that votes can accumulate around regional parties with the result that no national party can provide the support of majority at national level. Lastly, since the territorial/regional autonomy enables the groups/nationalities to experience self-governance, the successful experience/s of such self-governance may strengthen the secessionist tendencies.¹⁰⁷ However, although a state possessing regional diversity may prefer to refrain from giving autonomy to its regions because of these risks, it may come under increasing strain to do something to satisfy the regional demands in question. Therefore, the state should make a balanced analysis by considering all of the positive and negative aspects of the regional autonomy before giving its final decision on the issue.

In course of history, autonomy was acknowledged explicitly for the first time in the Document of Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990). According to Article 35 of the Document, “*the participating States will respect the right of persons belonging to national minorities*

¹⁰⁶ Latto, p.5.

¹⁰⁷ Latto, p.5.

to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities. The participating States note the efforts undertaken to project and create conditions for the promotion of the ethnic, cultural, linguistic, and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.”¹⁰⁸ This paragraph may seem weak and its legal binding effect can be low but the paragraph derives its importance from the fact that the concept of autonomy has secured a legitimate place in the area of identity policy for minorities, nationalities, and regions.¹⁰⁹ Nevertheless, it should not be forgotten that there is not any right of autonomy for the minorities, nationalities or regions within a state, and that there is not any obligation on states to provide autonomy for the ethnic groups within them in international law.¹¹⁰ Consequently, there is not any kind of obligation about any kind of autonomy in international law.

1.2.1. The Concept of Self-Determination

Self-determination is an attractive concept in international law but there is still no consensus on its scope and definition. The meaning of self-determination has changed gradually in the last century.¹¹¹ At the beginning, the concept was used only for colonial peoples but it became widespread in time and the notion that every people has the right of self-determination became part of international law. Today self-determination can be defined as “...*the right of a people ...to determine what path they want their group to follow, both for present as well as the future.*”¹¹² As the definition indicates, the concept refers to the freedom of choice for a people concerning its future.

¹⁰⁸ “Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE”, http://www.osce.org/documents/odihr/2006/06/19392_en.pdf (20.10.2006).

¹⁰⁹ Wright, p. 615.

¹¹⁰ Loukacheva, p. 6, Wheatley, p. 521.

¹¹¹ Andrea Muehlebach, “What Self in Self-Determination? Notes from the Frontiers of Transnational Indigenous Activism”, **Identities: Global Studies in Culture and Power**, Vol.10, 2003, p. 243.

¹¹² Allison M. Dussias, “Does The Right of Self-Determination Include A Right to Homeland?”, **Syracuse Journal of International Law and Commerce**, Vol. 31, No.1, Winter 2004, p. 85.

After the World War I, self-determination became a central element in international law.¹¹³ In fact, it stems from the 1918 Wilson Principles (13th principle).¹¹⁴ According to Wilson, “*national aspirations must be respected; peoples may now be dominated and governed only by their own consent. Self-determination is not a mere phrase. It is an imperative principle of action, which statesmen henceforth ignore at their peril.*”¹¹⁵ With his discourses, Wilson tried to turn the concept of self-determination into a legal international rule. However, the concept became as such only with the Charter of the United Nations.¹¹⁶

The concept of self-determination is mentioned in two places in the Charter of the United Nations. According to Article 1 (2) of the Charter, one of the purposes of the UN is “*to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.*”¹¹⁷ Also, Article 55 says that “*With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: a. higher standards of living, full employment, and conditions of economic and social progress and development; b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.*”¹¹⁸ In these articles, self-determination is stated as a principle, not as a right. Also, the meaning and scope of self-determination and the people who will use

¹¹³ Muehlebach, p. 247.

¹¹⁴ The thirteenth point is that “*an independent Polish state should be erected which should include the territories inhabited by indisputably Polish populations, which should be assured a free and secure access to the sea, and whose political and economic independence and territorial integrity should be guaranteed by international covenant.*” “8 January, 1918: President Woodrow Wilson's Fourteen Points”, <http://www.lib.byu.edu/~rdh/wwi/1918/14points.html> (17.11.2006)

¹¹⁵ “11 February, 1918: President Wilson's Address to Congress, Analyzing German and Austrian Peace Utterances”, <http://www.lib.byu.edu/~rdh/wwi/1918/wilpeace.html> (17.11.2006).

¹¹⁶ Pazarcı, p. 9.

¹¹⁷ “The Charter of the United Nations”, <http://www.hrweb.org/legal/unchartr.html> (20.10.2006).

¹¹⁸ “The Charter of the United Nations”.

self-determination are not explained. This principle is emphasized in the Charter just as a vehicle for establishing friendly relations among nations.¹¹⁹

However, the perspective on self-determination changed with the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by the UN General Assembly Resolution 1514 (XV) on December 14, 1960. According to the Article 2 of the Declaration, “*all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*”¹²⁰ Although the definitions of the concepts of self-determination and people are not still given¹²¹, self-determination is transferred from being a principle to being a right with this Declaration.¹²²

The meaning of self-determination in the Declaration has two aspects. The first aspect is related to internal organization of states. This meaning involves that a people has a right of choosing an administration form for itself without any kind of external pressure. Hence, freedom of choice is recognized to peoples. The second aspect of self-determination highlights that a people has a right of choosing to be part of whichever state it wants or of setting up an independent state.¹²³ In this context, when self-determination becomes an issue in the political life of a state, this situation carries the potential of changing circumstances of the state in political, social and economic areas.¹²⁴ This potential in turn has led to the slow development of the concept at the international level. Western colonial states acted reluctantly in giving the right of self-determination to their colonies due to their fears of destructive influences of that right on their political, economic and military control over those colonies.¹²⁵ However, considering the potential destructiveness of self-determination over states’ territories, Article 6 of the Declaration emphasizes that self-determination cannot be used for changing the borders of states: “*Any attempt aimed*

¹¹⁹ Şahin, pp. 15, 33, Foster, p. 144.

¹²⁰ “Declaration on the Granting of Independence to Colonial Countries and Peoples”, http://wikisource.org/wiki/UN_General_Assembly_Resolution_1514 (22.06.2005).

¹²¹ Muehlebach, p. 247.

¹²² Şahin, p. 21.

¹²³ Pazarcı, pp. 9-10.

¹²⁴ Foster, p. 142.

¹²⁵ Roach, p. 420.

at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."¹²⁶ Therefore, the principle of *unity of state* will precede the principle of self-determination, and self-determination will not be able to be used for damaging national unity or territorial integrity of a country partially or totally.¹²⁷ In this way, secession is not seen as a right¹²⁸, and international law does not support secession although it accepts peoples' right of self-determination. This reflects states' fear of the legitimization of secession,¹²⁹ as this would encourage secessionist violence.¹³⁰ Consequently, the unity of a state can be legally changed only by its consent. A part of a state cannot break the state into pieces. Communities possessing different features from the majority within a state do not have the right of self-determination. On the other hand, colonized peoples have the right of self-determination, because the colony and its inhabitants are not respectively part of the colonialist state's territory and nation. As a result, the independence of a colony (or its secession from a colonialist state) does not harm the principle of the unity of states.¹³¹

This situation creates a grey area as to the question of who has the right of self-determination. Thus, it is very important to define the concept of self or people to determine the beneficiaries of self-determination. There is an ongoing discussion over that definition as the concept of people is not clear in the international texts.¹³² In the Charter of the United Nations, *self* refers to *people*, but it is not explained or defined. Indeed, the problem stems from the question of whether a minority group demanding the right of self-determination forms a people or not. Widespread view is that a minority group is not a people.¹³³ For Muehlebach, many states make a distinction between self-determining peoples and non-self-determining collectivities. While the self-determining peoples refer to the peoples of states which became

¹²⁶ "Declaration on the Granting of Independence to Colonial Countries and Peoples".

¹²⁷ Şahin, p. 23.

¹²⁸ Michael Freeman, "The Right to National Self-Determination: Ethical Problems and Practical Solutions", in M. Clark Desmond and Charles Jones (eds.), **The Rights of Nations: Nations and Nationalism in a Changing World**, St. Martin's, New York, 1999, p. 63.

¹²⁹ Kevin Sneeby, "National Separation: Canada in Context – A Legal Perspective", **Louisiana Law Review**, Vol.53, 1993, p. 1378.

¹³⁰ Freeman, p. 63.

¹³¹ Pazarcı, pp. 11-2. For the examples, see Roach, pp. 421-4.

¹³² Suksi, pp. 190-1.

¹³³ Şahin, pp. 30, 33.

sovereign via decolonization process, the non-self-determining collectivities are perceived as the cultural communities residing in a state.¹³⁴ Therefore, the states accepting this understanding do not support the idea that every ethnic group (minority) has the right of self-determination.

A people or a group sustains its entity and its difference by living its culture and transferring it to new generations, because culture represents the difference from the *other* and is perceived as a requirement for survival. Thus, culture is essential for peoples' or groups' self-identification.¹³⁵ Such understanding encourages peoples or groups to get involved in national and international politics and law to protect their own culture.¹³⁶ In this context, self-determination becomes a reference point for peoples or ethnic groups, because it was espoused by colony peoples for a long time with the result that they have got what they wanted. Now, it is being deployed by minority ethnic groups or peoples with political demands ranging from the regional autonomy to direct independence (secession).¹³⁷ This situation indicates that the concept of self-determination will continue to occupy the agenda of politics and law.

1.2.2. Discussion about Self-Determination and Autonomy

It is important to clarify that self-determination and autonomy are different concepts due to the fact that self-determination is a right while autonomy is an option of the state.¹³⁸ However, if self-determination is considered as a multi-dimensional concept, it can embrace autonomy. In this sense, autonomy as an option of the state becomes one dimension of the concept of the right of self-determination.¹³⁹

¹³⁴ Muehlebach, p. 249.

¹³⁵ Kimberlee Weatherall, "Culture, Autonomy and *Djulibinyamurr*: Individual and Community in the Construction of Rights to Traditional Designs", **Modern Law Review**, Vol.64, No.2, March 2001, p. 224.

¹³⁶ Muehlebach, p. 245, Neil MacCormick, "Liberal Nationalism and Self-determination", in M. Clark Desmond and Charles Jones (eds.), **The Rights of Nations: Nations and Nationalism in a Changing World**, St. Martin's, New York, 1999, p. 77.

¹³⁷ Foster, p. 155.

¹³⁸ Thio, p. 132.

¹³⁹ Loukacheva, p. 6.

Self-determination represents the relationship/tension between the claim of secession/independence and the territorial integrity and the sovereignty of the state¹⁴⁰, because it can be seen as a means for peoples' independence or as a method of giving various rights such as autonomy to groups within the state.¹⁴¹ The purposes for which the right of self determination can be used are stated in Friendly Relations Declaration: *"the establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people"*¹⁴². In this sense, the meaning of self-determination shows diversity and it can refer to the right of independence; autonomy; the right of creating one's own political system; and the participation and the representation of the population in governance.¹⁴³ However, the meaning accepted in the international law is still related to the choice of a people for independence. Consequently, international law does not accept autonomy as one of the dimensions of self-determination.

Thornberry sees autonomy as a *gift* of the state. He rejects the idea that international law obliges the state to grant autonomy. He is of the opinion that autonomy can only be perceived as an (good) idea because it is not an accepted international right as self-determination. Therefore, international law cannot force states to constitute autonomous structures within their territories.¹⁴⁴ Every people have the right of self-determination. However, there is not any legal rule to the effect that all peoples must have an autonomous status.¹⁴⁵

¹⁴⁰ Suksi, p. 189.

¹⁴¹ Arend Lijphart, "Self-Determination versus Pre-Determination of Ethnic Minorities in Power-Sharing Systems", in W. Kymlicka (ed.), **The Rights of Minority Cultures**, Oxford University Press, Oxford, 1995, p. 275.

¹⁴² "Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations" UN General Assembly Resolution 2625 (XXV), 24.10.1970, <http://www.tamilnation.org/selfdetermination/instruments/2625GAdeclarationofprinciplesofinternationallaw.htm> (10.10.2006).

¹⁴³ Suksi, pp. 200-1.

¹⁴⁴ Muehlebach, p. 252-3, 261, Loukacheva, p. 7.

¹⁴⁵ Terry Eagleton, "Milliyetçilik ve İrlanda Olayı", (trans. Ali Ekber Yıldırım), **Birikim**, No.124, August 1999, pp. 78-9.

As seen, the state has the final authority concerning the establishment of the autonomous regions, which, deprives them of the right of self-determination. Thus, the existence of autonomous regions does not change the unitary structure of the regional state.

Finally, it can be said that diversity in state structures (state forms) emanates from differing needs of peoples and states. However, it should not be forgotten that every state carries its *sui generis* characteristics and the information given above only points to the common points of the state forms in question. In other words, two states having the same form may yet have different organizational, political and administrative characteristics. On the other hand, these common points are sufficient to determine or classify the form of a state. In the light of the information given above, the state form of the Kingdom of Spain is going to be examined as an example of the regional state in the following chapter. And the autonomous structure of the Basque Autonomous Community is going to be analyzed as an example of the regional autonomy in the third chapter.

THE SECOND CHAPTER

THE KINGDOM OF SPAIN

Spain, geographically speaking, is located on Iberian Peninsula as a bridge between Europe and Africa. She is also between the Atlantic Ocean and the Mediterranean Sea. The *Balearic Islands* in the Mediterranean, the *Canary Islands* in Atlantic Ocean, and the cities of *Ceuta* and *Melilla* located on the northern coast of Africa (Morocco) are also parts of Spain's territory. Principal cities of Spain are Madrid (the capital), Barcelona, Valencia, and Seville. Most of the population is Catholic.¹

Spain, or with her formal name, the Kingdom of Spain, is classified as a regional state today. At the end of the 1970s, Spain has experienced a transformation from centralist state structure into the regional state, which recognizes autonomy of regions and involves parliamentary democracy. The aim of the transformation was to find satisfactory solutions to the historical demands coming from some regions such as Catalonia and the Basque region, and to eliminate violent (terrorist) activities.

Spain had tried to have an autonomous system as early as during the 1930s, but the regulations, which altered the structure of the state, were made with the 1978 Constitution. Spain created *the System of Autonomous Communities* as a response to the demands of the regions. With this system, she turned into a regional state consisting of seventeen autonomous communities. Therefore, today Spain is called as a state of autonomous communities: *Estado de las Autonomias*.

Administratively, Spain is divided into cities, provinces and autonomous regions. There are seventeen autonomous regions. Every autonomous region makes its own laws. The Catalan, Galician, and Basque nationalities are recognized as distinct historical and cultural nationalities in the constitution. Six languages are

¹ Carmen Garcia Pastor, "Integration in Spain: A Critical View", **European Journal of Special Needs Education**, Vol.13, No.1, 1998, p. 43.

spoken in Spain: Spanish, Catalan, Valencian, Majorcan, Galician and Basque. Spanish is the official language of Spain. Catalan, the Basque language, Majorcan, Valencian and Galician are also official languages in some Autonomous Communities. The Kingdom of Spain took this particular state form as a result of its unique historical experiences. Therefore, history of Spain should be read carefully in order to understand today's Spain.

2.1. Historical Background

Spanish history has distinct social and political events and processes, like civil war and dictatorship, which considerably shaped the current political situation of Spain.²

Civilization in the Iberian Peninsula goes back to ancient times. The influence of the Roman Empire over the region started around 200 B.C. and the peninsula was controlled entirely by the Romans at the time of Christ. While in the fifth century the Visigoths ruled the region, the Muslim Moors controlled it during the eighth century. Christians fought Muslims and defeated them. Then, there emerged two Christian kingdoms: Castile and Aragon. These two kingdoms were united in 1469 with the marriage of Isabella I (the Queen of Castile) to Fernando II (the King of Aragon). In this new state, autonomous presence of the kingdoms was preserved. With this structure, Spain became one of the largest and most powerful empires in the world in the sixteenth century.³

In this period, the Spanish monarchy tried to impose the language of Castilian (Spanish) and to unify the laws over the whole country. These attempts were based on the incipient Spanish nationalism based on dynastic loyalty, Catholicism and the monarchy. However, they caused the Catalan and Portuguese uprisings in 1640.

² Maria Fernanda González Rojas, "The Transition to Democracy and the Accession of Spain in the EC: An Overview 1975-1986", **E-Working Papers**, Vol.2, No.6, June 2004, <http://www.estudioseuropeos.unam.mx/The%20transition%20to%20Democracy%20and%20the%20Accession%20of%20Spain.pdf> (19.06.2007).

³ Şahin, p. 179, Marta Ramon Gorina, "Spain -- The Unknown Melting Pot", **The Lundian**, Vol.17, No.126, 2004, p. 2, André Lecours, "Regionalism, Cultural Diversity and the State in Spain", **Journal of Multilingual and Multicultural Development**, Vol.22, No.3, 2001, p. 217.

After that, Portugal became an independent kingdom and separated from Spain.⁴ On the other hand, Catalonia, the Basque Provinces and Galicia were still under the administration of the Kingdom of Spain. However, they were, relatively speaking, powerful and developed regions within the monarchy. Hence, the attempts of the Spanish monarchy to constitute a centralist unitary state in the seventeenth century reached limited success over these three regions.⁵

The policies aimed at forming a centralist unitary state continued in the eighteenth and nineteenth centuries. However, after the 1850s, political and cultural movements emerged in Catalonia, Galicia and the Basque provinces so as to highlight their different identity. When these movements are examined, it is seen that the Catalan political and cultural movements did not project a complete separation from the monarchic state. The demands were a profound reform in the state system towards decentralization, and the reinforcement of regional structure.⁶

On the other hand, the Galician movements took three different forms at the end of the 1880s: liberal, traditionalist, and minority republican-federal. Concerning the liberal tendency, social modernization was supported; the existence of a unique national spirit was defended; and the Galician language was accepted as a sustaining element of Galicia's uniqueness. As to the traditionalist tendency, the aims were to maintain traditional society and to combat the liberal state by advocating the recovery of the medieval codes of law. And concerning the minority republican-federal tendency, the goal was to incorporate the peasants and the small craftsman into the Galician project.⁷

The Basque movements were different from the others. The difference stemmed from the *fueros*. The *fueros* or *code of laws* was a series of privileges given

⁴ Sandra Gil, "Nation-State Building Process and Cultural Diversity: Spain", p. 1, http://www.emz-berlin.de/projekte_e/pj50_pdf/spain.pdf (19.01.2007).

⁵ Michael Keating, "The Minority Nations of Spain and European Integration: A New Framework for Autonomy?", **Journal of Spanish Cultural Studies**, Vol.16, No.1, 2000 (Minority Nations), p. 33.

⁶ Gil, pp. 2-3, Catalan nationalist movement tried to get Catalonia recognized as a separate nation. Philip Resnick, "History, Memory and National Identities in Multinational States", Canadian Political Science Association Conference, London, June 2005, pp. 15, 21, <http://www.cpsa-acsp.ca/papers-2005/Resnick.pdf> (05.02.2007).

⁷ Gil, p. 3.

to the Basque territories.⁸ They involved exemption from paying taxes to the state, exemption from the obligation of military service, and the specific institutions with the capacity to veto state laws. The *fueros* was abolished by the conservative government of Spain in 1876. This created discontent among the Basques who then started to defend their traditions. In contrast to the cultural approaches of Catalans and Galicians, the Basque movements became ideological and political.⁹ In this period, one of the theorists of Basque nationalism, Sabino Arana, defined the Basque nation based on a series of distinct elements such as race, language, government and laws (*fueros*), character and customs, and historical personality. He also invented the name of *Euskadi* for the Basque region.¹⁰ Consequently, Basque nationalism started to increase.

The 1845 and 1876 constitutions of Spain were conservative. There was a need for liberal reforms in the state administration because of the political and cultural movements in Catalonia, the Basque Provinces and Galicia. However, the Spanish administration did not make any reform in the state structure. This was as much due to the pressure of the crown, the army, and the church¹¹ as to the fact that Spain had started to lose her territories (transatlantic colonies) and influence on the world politics.¹² These losses led to an identity crisis in Spain. The administration feared the disappearance of the state and needed more security. Thus, the monarchy preferred to rely on the army. In this context, the peripheral nationalisms (political and cultural movements) were seen as threats to the integrity of Spain with the result that the army took itself the task of fighting against these peripheral nationalisms by defending the Spanish nation, the Catholic religion, and the centralist state.

⁸ Resnick, pp. 4-5.

⁹ Gil, pp. 3-4, Luis Moreno, *The Madrid Bombing in the Domestic and Regional Politics of Spain, Unidad de Políticas Comparadas (CSIC) Working Paper*, No.04-13, Paper presented at the Conference 'The War on Terror – Three Years on', Royal Irish Academy, Dublin, 26 November 2004 (Madrid Bombing), footnote: 10 p. 5, <http://www.iesam.csic.es/doctrab2/dt-0413.pdf> (19.01.2007), Henri Boyer, "Linguistic Nationalism: an Interventionist Alternative to the Liberal Conceptions of the Linguistic Market", p. 6, http://www6.gencat.net/llengcat/noves/hm06tardor-hivern/docs/a_boyer.pdf (04.02.2007).

¹⁰ Resnick, p. 7, Lecours, p. 218.

¹¹ Gil, pp. 4-5.

¹² Harry Magdoff, *Sömürgecilikten Günümüze Emperyalizm*, (trans. Erdoğan Usta), Kalkedon Yayınları, İstanbul, 2006, pp. 42-5, Earl J. Hamilton, "Revisions in Economic History: VIII.-The Decline of Spain", *The Economic History Review*, Vol.8, No.2, May 1938, pp. 168-78.

Therefore, in contrast to the demands of regions, a centralist state organization was promoted. These developments in turn led to an increase in cultural and social diversity in Spain.¹³

On the other hand, the twentieth century has been an era of choices for Spain about the structure of state. The Spanish state was faced with two options: a centralized state or a decentralized state recognizing regional differences within it. Spain selected both of them.

In 1931, King Alfonso XIII abdicated his throne because of the demand of Spanish people for a republic. Then, a new constitution was prepared and Spain was defined as a federal republic in the republican constitution of 1931. The constitution recognized the right of territorial autonomy of the regions which approved it by referendum. While the Statute of Autonomy of Catalonia was sanctioned in 1932 and the Statute of Autonomy of the Basque region was recognized in 1933, Galicia got its autonomous statute in 1936. However, autonomy referring to the transfer of authority from the state to the regions was not realized because there emerged a tension between the nationalists defending centralist understanding and the republicans supporting regionalism. Then, in 1936, the civil war broke out between the nationalists (led by Francisco Franco) and the republicans.¹⁴ During the Spanish Civil War, General Franco's supporters advocated a highly centralized Spain by rejecting the decentralization tendencies. The civil war ended in 1939 with the defeat of the republicans by Franco's forces. Then General Franco started to rule Spain as a dictator with his centralist understanding.¹⁵

Francoism started to show its influence in the state structure and Spain was organized as a centralist unitary state again.¹⁶ Therefore, the triumph of Francoism caused the destruction of the autonomous regions and the nationalist movements.

¹³ Gil, pp. 4-5, Resnick, p. 15.

¹⁴ Nalbant, pp. 270-1, Şahin, p. 180, Gil, p. 6, Semih Eryıldız, **Yöre ve Bölge Araştırmasında Türkiye ve İspanya**, Toplumsal Dönüşüm Yayınları, İstanbul, 1993, p. 89.

¹⁵ Şahin, pp. 180-1, Montserrat Guibernau, "Spain: Catalonia and the Basque Country", **Parliamentary Affairs**, No.53, 2000 (Spain), pp. 57-8, Oral Sander, **Siyasi Tarih 1918-1994**, İmge Kitabevi, Ankara, 2000, pp. 50-2.

¹⁶ Keating, *Minority Nations*, p. 34, Eryıldız, p. 90.

The Franco administration defended a single entity referring to the Spanish, Catholic, and imperial nation. The government abolished the statutes of autonomy of Catalonia, the Basque region, and Galicia, and fought against the nationalist tendencies (movements).¹⁷ All sorts of symbols of the regional identities and their languages were forbidden.¹⁸ These policies caused discontent among people. As a reaction, some armed organizations, such as *ETA* in the Basque region, were set up in order to fight against the dictatorship.¹⁹

In 1969, Franco proclaimed that Juan Carlos de Borbón y Borbón would be his eventual successor. In 1975, Franco died. Then King Juan Carlos became the King of Spain on November 1975 and the monarchy was restored. With Franco's death and the re-emergence of the monarchy, demands for transition to democracy increased again. King Juan Carlos I was forced to change the structure of the state by forming a democratic constitutional monarchy and a system of autonomous regional governments.²⁰

A new constitution was approved by two assemblies (senate and congress) with a majority on October 31, 1978. On 6 December 1978, the constitution was accepted in a referendum with an approval rate of 87,8%, and came into force on 27 December with the signing by the King.²¹ In the referendum, Spanish people overwhelmingly approved the new democratic constitution which prescribed a new political system for them. The centralist non-democratic regime was abandoned and the System of Autonomous Communities was created.²²

¹⁷ Stanley Meisler, "Spain's New Democracy", **Foreign Affairs**, Vol.56, No.1, October 1977, p. 203.

¹⁸ Montserrat Guibernau, "Between Autonomy and Secession: The Accommodation of Catalonia within the New Democratic Spain", **Working Paper**, No.48/02, 2002 (Between Autonomy and Secession), p. 11, <http://www.one-europe.ac.uk/pdf/w48guibernau.pdf> (25.04.2005).

¹⁹ Lecours, p. 220. For detailed information about these armed organizations, see Moreno, Madrid Bombing, pp. 4-5.

²⁰ Gil, p. 6, Gonzalez Rojas, "The Transition to Democracy and the Accession of Spain in the EC: An Overview 1975-1986".

²¹ Güngör Azim Tuna, "İspanya Yönetim Sistemi", p. 108,

http://www.arem.gov.tr/proje/yonetim/Dunyada_Kamu_yon/ispanya.pdf (04.02.2007).

²² Guibernau, Spain, pp. 55, 60.

In fact, the process of democratization was started to resolve the *state problem*²³ referring to creating a new state structure in line with regional demands.²⁴ Therefore, the new administration was obliged to take a new step. Then, it chose to alter the structure of the state. The new model for integration contained a double consensus: the transformation of Spain into a democratic state and the recognition of nationalities. At this point, it is important to reemphasize certain distinct factors to help better explain the success of transition. The first factor was the leadership of King Juan Carlos I who supported the reforms very much. The second factor was the advocacy and consensus of various political factions on the reforms. The third and last factor was the active mobilization of large sectors of the population in favor of democratization.²⁵ Moreover, the effect of the conservative Catholicism was declined. Later in the process the then European Community also positively influenced the transition in question, as it constituted an external support for democratic stability, economic growth and social modernization.²⁶

As mentioned above, the 1978 constitution transformed Spain into a state of autonomous communities. In the decentralized structure of state, seventeen autonomous communities were established. These communities prepared statutes of autonomy, which provided the right to self-government. While some of these communities, such as Catalonia, were historical, the others, such as the Autonomous Community of Madrid, were created artificially by the administration. (For the date of approval of statutes of autonomy for autonomous communities, see Table 1) The central government gradually transferred its legislative and executive competences in the areas of education, health, agriculture and fishing, tourism, transport, commerce, and culture to the autonomous communities while it kept its exclusive responsibility

²³ Juan J. Linz and Alfred Stepan, "Political Identities and Electoral Sequences: Spain, the Soviet Union, and Yugoslavia", *Daedalus*, Vol.121, No.2, Spring 1992, p. 125.

²⁴ Nalbant, p. 271.

²⁵ Guibernau, Spain, p. 60, Tuna, pp. 101, 103, Kenneth Maxwell and Steven Spiegel, **The New Spain From Isolation to Influence**, Council of Foreign Relations Press, New York, 1994, pp. 11-4, José A. Olmeda, "The Process from Authoritarianism to Democracy in Spain: The Impact of the 1981 Failed Coup", *CPA Estudios/Working Papers*, No.7, 2003, pp. 2-3, http://www.uned.es/dcpa/estudios_workingpapers/CPAestudios7_2003.pdf (19.01.2007).

²⁶ Keating, *Minority Nations*, p. 34, Guibernau, *Between Autonomy and Secession*, p. 12, Gonzalez Rojas, pp. 18-25.

for foreign affairs, external trade, defense, justice, criminal and commercial law, civil aviation, and merchant shipping.²⁷

Table 1: The Date of Approval of Statutes of Autonomy
for Autonomous Communities

Autonomous Community	Date of Approval
Basque Country	December 18, 1979
Catalonia	December 18, 1979
Galicia	April 6, 1981
Andalusia	December 30, 1981
Asturias	December 30, 1981
Cantabria	December 30, 1981
La Rioja	June 9, 1982
Murcia	June 9, 1982
Valencia	July 1, 1982
Aragon	August 10, 1982
Castilla-la Mancha	August 10, 1982
Canary Islands	August 10, 1982
Navarre	August 10, 1982
Balearic Islands	February 25, 1983
Castilla y León	February 25, 1983
Extremadura	February 25, 1983
Madrid	February 25, 1983

(Source: Maxwell and Spiegel, 1994, p. 21.)

On the other hand, the military suspiciously approached the transition process. In the Francoist political system, the military occupied a central place. However, this situation changed in the new political system. There emerged a kind of resentment towards democracy in the armed forces. They felt themselves alienated or isolated. Also, they continued to see nationalist tendencies as a threat to Spanish unity and, thus, sought to keep the idea of intervention into politics afresh. Afterwards, the armed forces tried to realize a military coup on February 23, 1981. Yet, King Juan Carlos played an active role against the attempt and supported the democratic transition. As a result, the attempt failed.²⁸

²⁷ Gil, p. 7, Nalbant, p. 284, Emma Armstrong and Craig French, "Parliamentary Systems: Spain", The Scottish Parliament the Information Centre, p. 2, <http://www.scottish.parliament.uk/corporate/elu/briefings/spain.pdf> (19.01.2007).

²⁸ Olmeda, pp. 3-9, Maxwell and Spiegel, pp. 15-7.

As to the international level, Spain was accepted as a member by NATO on October 1982.²⁹ Also, in the early 1980s, the governments aspired to become a full member of the then European Community as that would provide economical advantages and consolidate the transformation of Spain to democracy. That aspiration was realized with Spain becoming a full member of the Community on January 1, 1986.³⁰ These were important steps for post-Franco Spain as they acknowledged and, thus, contributed to the strengthening of the Spanish transformation.

As this brief historical background suggests, historical, social, economical, geographical and cultural factors along with the need for security affected Spain's transformation into a regional state. Spain completed the process of regionalism and became a regional state at the end of the 20th century.³¹

2.2. The System of Spain's State Structure

Spain preferred to be organized as a regional state with the 1978 Constitution. This constitution provided a strong basis for the Spanish administration and the autonomous communities in the transformation process.

In this context, it needs to be clarified that the Spanish constitution does not create a federal state.³² On the contrary, Spain forms a unitary state consisting of seventeen autonomous communities, 50 provinces and 8098 municipalities.³³ This territorial division is the result of Article 137: *"the State is organized territorially*

²⁹ Guibernau, Spain, p. 55.

³⁰ Tuna, p. 104

³¹ The participation/representation of the Spanish regions in the European Union Council of Ministers was accepted at the end of 2004. This new situation indicates that the future progress of self-government in the regions such as the Basque Autonomous Community and Catalonia will increasingly be part of the agenda of the Europe Union. Regions of Europe, "Regionalisation Gains Ground in Europe", **AER – ARE – VRE Dossier**, No.11, Winter 2005, p. 2, http://www.a-e-r.org/fileadmin/user_upload/PressComm/Publications/AER-ARE-VRE-Dossier/2005/GB-ARE-dossier-11.pdf (03.03.2007).

³² Robert Agranoff, "Federal Asymmetry and Intergovernmental Relations in Spain", **Asymmetry Series**, No.17, 2005, p. 3, Luis Moreno, "Decentralization in Spain", **Regional Studies**, Vol.36, No.4, 2002 (Decentralization), p. 400.

³³ Morata, "Yerel Yönetim ve Yenilikçi Yönetişim: İspanya Örneği".

into municipalities, provinces, and the Autonomous Communities which may be constituted.”³⁴ Therefore, unlike a federation in which federate states unite under federal state, Spain herself constitutes autonomous regions inside her territory.

The 1978 constitution starts with an emphasis on the higher principles.³⁵ Article 1(1) of the 1978 Constitution states that: “*Spain constitutes itself into a social and democratic state of law which advocates liberty, justice, equality, and political pluralism as the superior values of its legal order.*”³⁶ As this article suggests, Spain is a democracy which guarantees the equality of all Spanish citizens before the law.³⁷

On the other hand, Article 1 (2) of the constitution emphasizes “*national sovereignty belongs to the Spanish people from whom emanate the powers of the state.*”³⁸ This article refers to the principle of the unity of sovereignty in Spain, which belongs to Spaniards. Therefore, the state takes its power from the Spanish people who are the real owner of the national independence.³⁹ Thus, the legitimacy of political power comes from Spanish nation.⁴⁰

The notion of people is an important concept in the constitution, according to which the Spanish people constitutes a sole nation. Thus, there is the unity of nation in Spain referring to the Spanish nation. However, Spanish nation contains nationalities and regions. The autonomy of regions follows from the recognition of

³⁴ “The Constitution of Spain”, <http://www.vescc.com/constitution/spain-constitution-eng.html> (19.01.2007).

³⁵ Gonzalez Rojas, “The Transition to Democracy and the Accession of Spain in the EC: An Overview 1975-1986”, Miguel Revenga Sánchez, “The Move towards A (and the Struggle for) Militant Democracy in Spain”, ECPR Conference, Marburg, 18-21, September 2003, p. 7, <http://www.essex.ac.uk/ecpr/events/generalconference/marburg/papers/10/7/Sanchez.pdf> (19.01.2007).

³⁶ “The Constitution of Spain”.

³⁷ Advisory Committee on the Framework Convention for the Protection of National Minorities, “Comments of the Government of Spain on the Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in Spain”, 2004, p. 5, http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_monitoring/2_monitoring_mechanism/5_comments_by_the_states_concerned/1_first_cycle/PDF_1st_comments_Spain.pdf (18.11.2006).

³⁸ “The Constitution of Spain”.

³⁹ Tuna, p. 109.

⁴⁰ Nalbant, p. 272.

the social, historic and cultural pluralism of the Spanish nation.⁴¹ In this context, it can be said that the most controversial part of the constitution is Article 2 as it indicates that the constitution contains two opposite elements: unity and diversity.⁴² According to Article 2, *“the Constitution is based on the indissoluble unity of the Spanish nation, the common and indivisible homeland of all Spaniards, and recognizes and guarantees the right to autonomy of the nationalities [las nacionalidades] and regions which make it up and the solidarity among all of them.”*⁴³ As seen, this article represents *“the tension between the unity of Spain and the social pressure to recognize historic nations such as Catalonia, Galicia and the Basque Country”*.⁴⁴

Overall Article 2 contains three significant components. The first component is the principle of unity of nation and indivisible country. In terms of this principle, Spanish nation is the origin of sovereignty, and the right of self-determination is not given to nationalities. There is only one nation which is the Spanish nation. Thus, the state of Spain is an indivisible unity with her territory and nation. Besides, the understanding of the unity of nation facilitates only one kind of citizenship in Spain: Spanish citizenship. Hence, Spanish citizenship covers all country with the effect that the residents or nationalities of the regions do not have a citizenship link with their autonomous communities. The second component is the right of autonomy of regions. In line with that principle, regions or nationalities have the right of establishing autonomous communities, but they are accepted as parts of the country or the nation. The right of autonomy only enables Spanish regions to have some separate competences. Lastly, the third component is the solidarity among rich and poor autonomous communities. Solidarity expresses the balancing acts of the central state vis-à-vis autonomous communities. In line with that principle, the revenue of taxes collected from the regions is gathered at the center and then the center re-

⁴¹ Advisory Committee on the Framework Convention for the Protection of National Minorities, p. 3, Tuna, p. 107, Daniele Conversi, “The Smooth Transition: Spain’s 1978 Constitution and the Nationalities Question”, **National Identities**, Vol.4, No.3, 2002, p. 228.

⁴² Nalbant, pp. 26, 272-3.

⁴³ “The Constitution of Spain”.

⁴⁴ Guibernau, *Between Autonomy and Secession*, p. 13.

distributes it to the regions. The principle of solidarity prevents the autonomous communities from having any economical or social privileges.⁴⁵

The terms of nationality and region in the constitution are the same. Their meaning refers to “...*certain territorial zones which share historical and cultural characters and which are granted the right to autonomy.*”⁴⁶ In this context, regions do not have a *given* nationality at the beginning. A region does not have a nationality until the time it defines its nationality in its statute. It calls its population as the nationality of the region in its Statute of Autonomy with the approval of the central parliament. Therefore, nationality has an operational function and it does not represent or denote a minority group. As a result, nationalities within Spain are not accepted as minorities in the constitution. Also, they do not form different nations in Spain. Thus, the unity of Spanish nation is maintained. In this context, the eight autonomous communities of Spain which are the Basque Autonomous Community, Catalonia, the Community of Valencia, Andalusia, Balearic Islands, Galicia, Aragon and Canary Islands identified their own populations with the notion of nationality in their autonomous statutes while the rest did not.⁴⁷

When it comes to competences of the central government and autonomous communities, there is a complicated structure. In Article 148 of Spain Constitution, the competences of autonomous communities are mentioned. Some of them involve planning, public works, agriculture, tourism, health and education. On the other hand, the competences of the central government are stated in Article 149. Important competences of the center include the matters relating to nationality, immigration, emigration and asylum, international relations, defense and armed forces, administration of justice, customs and excise, foreign trade, monetary policy, control of banking and insurance, inland revenue and state budget, navy and shipping, ports and airports, transport; telecommunications, public works, production and trade, statistics.⁴⁸ In the financial area, the Basque Country and Navarre have the

⁴⁵ Nalbant, pp. 272, 275, Teziç, pp. 126-7, Conversi, p. 229.

⁴⁶ Advisory Committee on the Framework Convention for the Protection of National Minorities, p. 3.

⁴⁷ Advisory Committee on the Framework Convention for the Protection of National Minorities, p. 3.

⁴⁸ For further details about the competences of autonomous communities and the central government, see Articles 148-9, “The Constitution of Spain”.

exceptional competence of raising their own taxes.⁴⁹ However, it should be emphasized that although the constitution enumerates the competences which can be transferred from the centre to the regions, it is only with the experiences of the System of Autonomous Communities that the roles and powers became much clearer and more precise.⁵⁰

2.2.1. The Parliamentary System of Spain

The Kingdom of Spain is a parliamentary monarchy. This situation is stated in Article 1(3) of the constitution: “*the political form of the Spanish State is the parliamentary Monarchy.*”⁵¹ The monarchy was restored in the Franco period but it has been protected in the new system because of its historical representation of the unity of state.⁵² Thus, monarch and parliamentary democracy coexist in Spain. However, the constitution clearly rules out monarchical sovereignty and emphasizes the sovereignty of Spanish nation.⁵³

The *Cortes Generales* is the national parliament of Spain. As a bicameral legislature the *Cortes Generales* consists of two houses: the Congress of Deputies and the Senate, both of which are elected for a period of 4 years.⁵⁴ Both assemblies represent the whole Spain. They exercise legislative power, accept the budget of the state, control the policies of the government, and fulfill other tasks given by the constitution.⁵⁵

⁴⁹ Moreno, Decentralization, p. 401, Violeta Ruiz Almendral, “More Power for Spain’s Municipalities?”, **Federations**, Vol.2, No.5, November 2002, p. 10, Jeniffer Todd, “Europe’s Old States and the New World Order”, p. 236, <http://www.ucd.ie/politics/politicsinfo/html/text%20files/todd%20europe%27s%20old%20states.pdf> (19.01.2007).

⁵⁰ Pere Gali, “The Fundings of Autonomous Communities in Spain”, pp. 1-2, <http://www.desequilibrefiscal.gouv.qc.ca/en/pdf/gali.pdf> (04.02.2007).

⁵¹ “The Constitution of Spain”.

⁵² Tuna, p. 110.

⁵³ Nalbant, p. 275.

⁵⁴ Armstrong and French, pp. 2-3, International Commission of Jurists, “Spain”, p. 336, <http://www.icj.org/IMG/pdf/spain.pdf> (10.10.2006).

⁵⁵ Tuna, p. 110.

2.2.1.1. The King

The king is the head of the state constitutionally and hereditarily. He is the symbol of the unity of Spanish nation and the continuity of the state. In other words, the importance of the king derives from his representation of national unity.⁵⁶

Kingdom is hereditary. The oldest son of the king becomes the new king after the death of his father. When the king has not got a son, the daughter of the king can become the monarch. If there is not any appropriate heir in the king's family, the parliament determines the name for the throne.⁵⁷

The limits of the powers of the king are clearly stated under Title II in the constitution with the aim of ensuring that he will fulfill his tasks impartially and outside politics. In this context, it should be emphasized that King Juan Carlos I made sacrifice by abnegating from his powers given in the Franco period.⁵⁸

The king symbolically appoints the prime minister and the president of autonomous communities.⁵⁹ He approves the laws enacted by the parliament. He has the power of dissolving the parliament. He represents Spain at highest level in international relations although he does not have power in foreign affairs. In other words, the king cannot act independently in foreign affairs, as he must take the approval of the government in that regard. Yet, his representation role is important. The king approves the international agreements. He also proclaims war and peace after being given the competence by the assembly. Also, the king carries the title of High Command of the Spanish army although he does not have such competence in the real sense of the term. Indeed, the constitution does not give any independent executive power to the king. All executive functions of the king require the signature of the prime minister or one minister.⁶⁰

⁵⁶ Nalbant, p. 275, Tuna, p. 109, International Commission of Jurists, p. 336.

⁵⁷ Tuna, p. 110.

⁵⁸ Tuna, p. 110.

⁵⁹ Nalbant, p. 275.

⁶⁰ Tuna, pp. 109, 114.

2.2.1.2. The Prime Minister

The head of government is prime minister. After a general election, the monarch assigns to the leader of the largest parliamentary group the duty of forming a government as prime minister. The prime minister forms the Council of Ministers (the Cabinet). To form the government the prime minister has to provide majority approval of the Congress of Deputies. Thus, the prime minister is elected by the Congress following the elections which are held every four years.⁶¹

The tasks and competences of the prime minister are counted under Title V in the constitution. The prime minister determines the candidates of ministers and presents them to the king. S/he is closely involved in the preparation of the government program. Then, s/he presents that program to the Congress in order to obtain a vote of confidence. The latter is an obligation for becoming prime minister. Then the responsibility of the government belongs to the prime minister who coordinates the ministers' works. Additionally, the armed forces are under the control of the prime minister. Lastly, s/he can propose the dissolution of the Congress or Senate.⁶²

2.2.1.3. The Council of Ministers

The prime minister, the vice prime ministers, and ministers form the Council of Ministers which is the highest executive organ of Spain. The Council fulfils the administrative tasks written in the constitution. Also, it makes the policies of government. Hence, it is responsible for the realization of government program. Besides, every minister is responsible of the administration of his/her own ministry. Also, the responsibility of national security and defense belongs to the Council of Ministers. Importantly, the Council must account for all of its functions or activities to the parliament.⁶³

⁶¹ Armstrong and French, pp. 2-3.

⁶² Tuna, pp. 114-5.

⁶³ Tuna, p. 115.

2.2.1.4. The Congress (the Assembly of Representatives)

One of the two legislative houses of the *Cortes Generales* is the Congress of Deputies. The number of members of the Congress is 350. They are elected through free, fair, and direct elections with hidden vote. The constituency of election is the cities of Spain. Every city has two seats, but other seats in the Congress are distributed on the basis of the population size of cities. The members of the Congress are elected for four years and they represent both their constituency and all Spanish people.⁶⁴

The Congress and the Senate are not at the same level. The constitutional tasks and authority of the Congress make it superior over the Senate. In this context, the Congress has an important influence over the executive organ because the prime minister must obtain a vote of confidence from the Congress before appointed by the king. Also, when an interpellation is accepted in the Congress with an absolute majority, the prime minister with his/her government is overthrown. Therefore, the Congress has both the powers of forming and voting out of office the government. Also, the dominance of the Congress is felt in the legislation process as the proposals for laws and budget are first discussed in the Congress. The proposals approved by the Congress are then sent to the Senate. The Senate can accept, veto or amend some articles of the proposals. However, these amendments require the approval of the Congress to enter into force. The Congress has the power of overriding the veto of the Senate with a simple majority. And finally, when both assemblies meet and form the *Cortes Generales*, the head of the Congress directs the session.⁶⁵

2.2.1.5. The Senate

The other assembly of the *Cortes Generales* is the Senate consisting of 259 seats. While fifty Senators are indirectly elected by the seventeen autonomous communities on the basis of one per region plus one for each million inhabitants,

⁶⁴ Armstrong and French, p. 2, Manuel Gomez Conesa, "Doing Business in Spain", MGI Audicon & Partners, pp. 4-5, <http://www.mgiworld.com/doingbusiness/dbiSpain2005.pdf> (19.01.2007).

⁶⁵ Tuna, p. 110.

others are directly elected by party list vote by the provinces and by the Balearic and Canary Islands. Therefore, only 50 Senators come from the Autonomous Communities as representatives. Elections for the Senate are held every four years.⁶⁶

The Senate can initiate the legislation. It has also the power of amending or vetoing legislation initiated by the Congress. However, the Congress, as already explained, can override the veto of the Senate with a simple majority of its members. Also, the Senate has a special competence about autonomous communities. If an autonomous community government fails to carry out legal and constitutional liabilities or acts against the general interests of Spain, it can be forced to fulfill its liabilities by a decision of the Senate taken with absolute majority. However, if the problem is not solved, the central government may take measures with the approval of the Senate.⁶⁷ Therefore, the Senate plays an important function in the issues of local and regional policies and the development of autonomous communities. Moreover, the Senate can supervise the government's activities by demanding information from the government.⁶⁸

2.2.2. The Judicial System

The General Council of Judicial Power governs the judicial system in Spain.⁶⁹ The independent courts and judges exercise adjudicatory power on behalf of the king who represents the Spanish people.⁷⁰ There is the unity of judicial jurisdiction.⁷¹

While the highest judiciary organ of the state is the Supreme Court which does not deal with the constitutional issues⁷², the Constitutional Court seeks to ensure that the parliamentary legislation complies with the constitution. In other words, the Constitutional Court deals with the complaints concerning the compliance of the

⁶⁶ Armstrong and French, pp. 2-3, Tuna, p. 112, Nalbant, p. 291.

⁶⁷ This kind of situation has not occurred up till now. Thus, the nature of those measures is not clear. Tuna, p. 120.

⁶⁸ Tuna, p. 112, Nalbant, pp. 291-2, Teziç, p. 127.

⁶⁹ International Commission of Jurists, p. 338.

⁷⁰ Tuna, p. 112.

⁷¹ Teziç, p. 127.

⁷² International Commission of Jurists, p. 339.

laws with the constitution. The role of the Constitutional Court is important in Spanish regionalism, because it is the last organ which can resolve the disputes between the state and autonomous communities about the share of competences.⁷³

2.2.3. The Position of the Army and the Catholic Church

The new 1978 constitution contains important articles on the roles and powers of the Catholic Church and the Armed Forces, which were both very influential institutions during the Franco period.⁷⁴ The role given to the military is to defend the sovereignty and constitutional order of Spain.⁷⁵ This is expressed in Article 8(1): *“the Armed Forces, constituting the Land Army, the Navy and the Air Force, have as their mission the guarantee of the sovereignty and independence of Spain, the defense of its territorial integrity and the constitutional order.”*⁷⁶ However, the defense responsibility in the final instance belongs to the administration elected by the Spanish people. Therefore, the army is under the civil authority. The king is the High Command of the army, but it is the government who determines defense policy.⁷⁷

Concerning the Church, catholic religion is not referred as the religion of the state in the 1978 Constitution. In this sense, the role of the Catholic Church was weakened. Yet, the freedom of religion is guaranteed in the constitution.⁷⁸

2.2.4. The System of Autonomous Communities

The Spanish administration chose *a model of symmetric decentralization* for Spain. This was the result of the understanding of *café para todos* (coffee for

⁷³ Tuna, pp. 112-3, Moreno, Decentralization, p. 405, Nalbant, pp. 290-1, Armstrong and French, p. 5.

⁷⁴ For the position of the Armed Forces and the Church in the Franco period, see S. Grover Rich, Jr., “Franco Spain: A Reappraisal”, **Political Science Quarterly**, Vol.67, No.3, September 1952, pp. 382-5.

⁷⁵ Tuna, p. 109.

⁷⁶ “The Constitution of Spain”.

⁷⁷ Tuna, pp. 109, 116-7.

⁷⁸ Tuna, p. 109.

everyone).⁷⁹ The administration created a system of seventeen autonomous communities in which Catalonia, the Basque Country and Galicia were historically and culturally distinct while others were artificial creatures based on non-territorial identity. Under this structure, Galicia, Catalonia, and the Basque Country, as historical nationalities, got their full autonomous statutes immediately,⁸⁰ but the other regions had to complete a five-year period of restricted autonomy in order to prove their capacity of realizing autonomous structure.⁸¹ Hence, the 1978 constitution has recognized two different routes to autonomy. It was faster for the areas with the strongest historical and political claims, which are Catalonia, the Basque Country, and Galicia. And for other regions, the constitution created a *normal* procedure for gaining autonomy status.⁸² As a result, seventeen Autonomous Communities were set up over the whole of Spain between 1979 and 1983 via a step-by-step strategy.⁸³ To repeat, the fast route is the consequence of the historical experience and consciousness of some nationalities about autonomy and of the fact that their autonomous statutes were abolished by force in the past.⁸⁴ On the other hand, normal process is the result of the idea that since other autonomous communities do not have the historical experience of autonomy,⁸⁵ they need to get the required experience in five years. However, it should be underlined that no legal distinction remains among communities after the achievement of full autonomy.⁸⁶ As Todd says, “*in terms of constitutional status, all seventeen Spanish autonomous communities ...have constitutional guarantees of autonomy (in the constitution and in their specific organic laws) which must be respected by the central state.*”⁸⁷ This situation shows the symmetric structure of the system.

⁷⁹ Guibernau, Spain, p. 61.

⁸⁰ Linz and Stepan explain that “*the Catalán statute was approved by 87.9 percent and the Basque statute by 90.3 percent of those who voted in the regions.*” Linz and Stepan, p. 127.

⁸¹ Guibernau, Spain, p. 61.

⁸² Agranoff, p. 3, Colin T. Reid and Gerardo Ruiz-Rico Ruiz, “Scotland and Spain: The Division of Environmental Competences”, **International Comparative Law Quarterly**, Vol.52, January 2003, p. 210.

⁸³ Agranoff, p. 3, Revenga Sánchez, p. 7.

⁸⁴ Nalbant, p. 283.

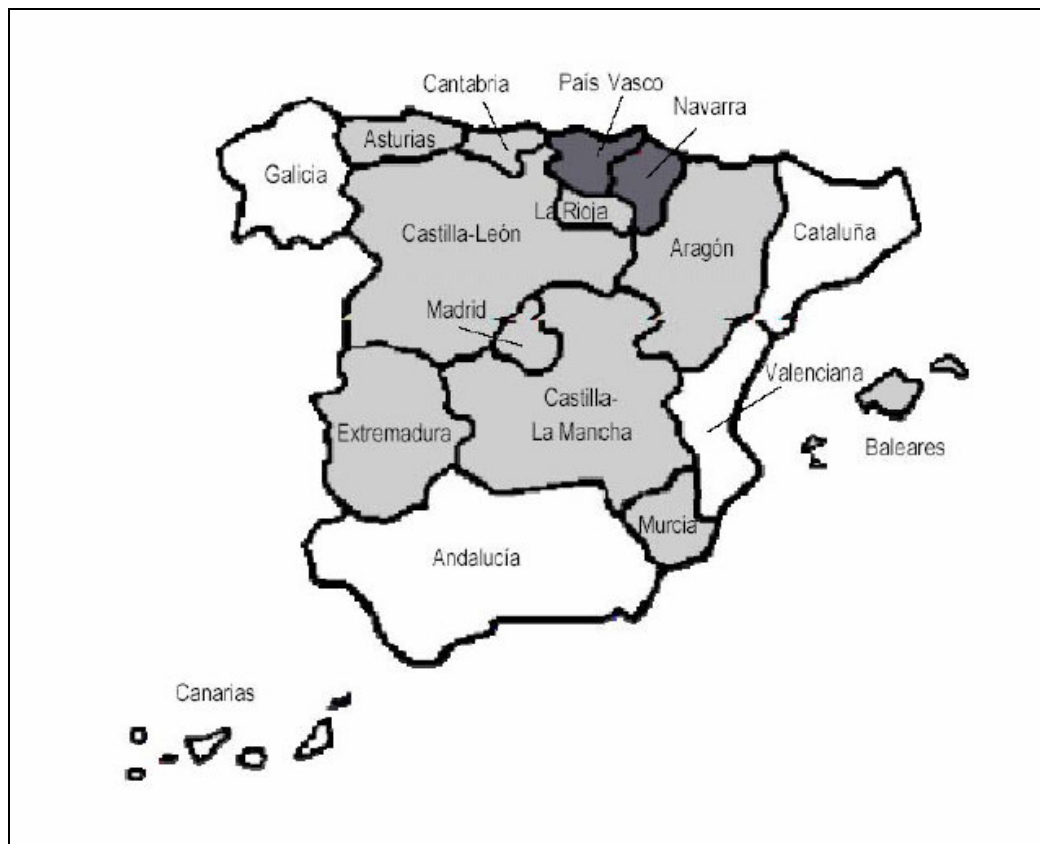
⁸⁵ Tuna, p. 118.

⁸⁶ Guibernau, Spain, p. 61.

⁸⁷ Todd, p. 234.

Autonomous communities of Spain are as follows: Andalusia, Aragon, Principality of Asturias, Balearic Islands, Basque Country (the BAC, *Pais Vasco* in Spanish), Canary Islands, Cantabria, Castile-La Mancha, Castile and Leon, Catalonia, Extremadura, Galicia, La Rioja, Madrid, Murcia, Navarre, and Valencia.⁸⁸ (For Autonomous Communities of Spain, see Figure 1)

Figure 1: The Map of Autonomous Communities of Spain



(Source: Kingdom of Spain Public Administration Country Profile, 2006, p. 9)

Autonomous Communities of Spain have different territorial size, population, and economic development from each other. Every autonomous community can have its own capital. Also, autonomous communities can have and use their own flag and emblem alongside the Spanish flag⁸⁹ as the result of Article 4(2) stating “*recognition*

⁸⁸ Gomez Conesa, p. 6, “İspanya”, <http://ansiklopedi.info/İspanya> (16.05.2005).

⁸⁹ Tuna, pp. 118-9.

*of flags and ensigns of the autonomous communities is admissible by law. These will be used beside the flag of Spain on their public buildings and in their official acts.”*⁹⁰

It should be emphasized that regions of Spain do not carry the features of a state, as the three fundamental components of state (sovereignty, territory, and nation) do not exist in the regions. The sovereignty belongs to the Spanish state so the Autonomous Communities do not represent the sovereign power in their regions. Also, there is the unity of nation in Spain so the population of the Autonomous Community is part of the Spanish nation (people). The residents of the region are not an independent entity from the state. Lastly, every autonomous community has its borders but this limited area (the region) does not refer to *territory* of a state. The region is the part of the whole country of Spain. On the other hand, the region does not have *de jure* recognition internationally.⁹¹ Therefore, the regions of Spain should not be seen as federate states of federation.

Another important point about the autonomous communities is that the regions do not have the right of self-determination but they have the right of protecting and developing their own cultures.⁹² As known, every people have the right of self-determination. However, in the Spanish case, the autonomous region does not have the right of self-determination, because the region’s population does not form a people besides the Spanish people within Spain. On the other hand, the constitution of Spain recognizes the cultural distinctiveness of the regions as cultural diversity of Spain. Therefore, the protection and sustainability of the culture of the regions are supported by the constitution.

The constitution does not define the term of autonomy.⁹³ However, according to the Constitutional Court, autonomy has two aspects. Firstly, autonomy is not sovereignty. Secondly, autonomy is a right. Autonomy is not sovereignty, because it is a constrained authority and is meaningful in the framework of the principle of

⁹⁰ “The Constitution of Spain”.

⁹¹ Nalbant, p. 27.

⁹² Nalbant, p. 274.

⁹³ Tuna, p. 107.

national unity. In other words, autonomy is limited power and exists in a legal order. Within this legal order, the state as the sole possessor of sovereignty has superiority. On the other hand, autonomy is a right of the region for participating in that part of the governing and decision-making process concerning itself. Although the constitution does not define autonomy, it is a fundamental principle of the Spanish constitution. And, any act detrimental to autonomy is contrary to the constitution.⁹⁴

The autonomous communities of Spain have two kinds of autonomy: political and financial. The political autonomy contains firstly the autonomy of legislation. In the autonomy of legislation, the autonomous communities have the power of carrying out legislative functions in certain areas. Secondly, the political autonomy involves autonomy of executive. This gives autonomous communities the power of administration. However, the political autonomy does not cover the area of judiciary. The Constitutional Court clearly expressed that the judicial power belongs to the state and that autonomous communities do not have competences in that regard.⁹⁵

Autonomous communities also have financial autonomy. This financial autonomy is not unlimited. It covers regulating regional taxes in line with the constitution and laws, and taking tax revenue from the central government sources. The aim of the financial autonomy is to reinforce the authority of the autonomous communities over the regions. Yet, this financial autonomy must be carried out with the coordination of the central government policies. The state plans and coordinates general economic activity, among other considerations, with a view to regional development and the demands of autonomous communities. The state is also responsible for transferring the necessary resources to autonomous communities so as to reinforce their autonomy. However, the state has the final responsibility in the financial matters and this ensures the control of the center over the regions. The center exercises that financial control through the Exchequer and Audit Department of the state.⁹⁶

⁹⁴ Nalbant, pp. 277-8.

⁹⁵ Nalbant, pp. 278, 280, 282-3, 308.

⁹⁶ Tuna, pp. 119, 135, 147, Nalbant, pp. 280-1.

There are some certain restrictions for the autonomous communities. Firstly, the statutes of communities cannot embody economic and social privileges. Secondly, those statutes cannot constrain the rights and freedoms of people, e.g. freedom of movement. Thirdly, the autonomous communities can never set up a federation.⁹⁷

2.2.4.1. The Statutes of the Autonomous Communities

Autonomous communities cannot make their own constitution. This is what differentiates autonomous communities from federate states.⁹⁸ Therefore, the source of the autonomy of autonomous communities is the Spanish constitution and their statutes. The constitution recognizes to autonomous communities the right of determining their statutes.⁹⁹ Thus, every autonomous community is governed with its statute of autonomy.¹⁰⁰ According to Article 147(1) of the Spanish constitution, “*within the terms of the present Constitution, the statutes shall be the basic institutional norm of each Autonomous Community and the State shall recognize them and protect them as an integral part of its juridical order.*”¹⁰¹ The Statute is prepared by the elected assembly of the autonomous region. However, it comes into power with the approval of national parliament. As a result, the statute is the result of the exercise of their legal authorities by the autonomous community and the center.¹⁰² However, the statute of autonomy cannot be changed by the national parliament.¹⁰³

According to Article 147(2) of the constitution, “*the Statutes of autonomy must contain: a) The name of the Community which best corresponds to its historical identity. b) The delimitation of its territory. c) The name, organization, and seat of its own autonomous institutions. d) The competences assumed within the framework of the Constitution and the bases for the transfer of the corresponding services to*

⁹⁷ Nalbant, pp. 275-6.

⁹⁸ Tuna, p. 106.

⁹⁹ Nalbant, pp. 278, 311.

¹⁰⁰ Tuna, p. 119.

¹⁰¹ “The Constitution of Spain”.

¹⁰² Nalbant, pp. 276, 311, Tuna, p. 106.

¹⁰³ Teziç, p. 127.

them.”¹⁰⁴ The statutes of the Autonomous Communities of Spain have been prepared in obedience to these points.

On the other hand, it should be emphasized that statutes are not norms of constitutional value as their position is under the constitution and they have to be compatible with the constitution. The Constitutional Court itself ensures the latter.¹⁰⁵

2.2.4.2. The Regional Parliament (Assembly)

In the autonomous community, there is only one assembly (the regional parliament). The members of this assembly are elected regionally on the basis of proportional representation for 4 years. The regional parliament represents the people residing in the region, uses legislative power over the region, approves the budget of the Autonomous Community, regulates the works and functions of regional governance, puts and collects taxes, approves the agreements made with other autonomous communities, elects the senators who will represent the region in the Senate, elects the president of the autonomous community, gives interpellation against the government, applies to the Constitutional Court about the regional laws, and demands the central government to enact some laws which are necessary for the region.¹⁰⁶ However, there is no official channel for the central government to get involved in the regions. Regional politicians to express their demands use party networks and political bargaining.¹⁰⁷ There is also a regional executive organ in the autonomous community.

2.2.4.3. The President of the Autonomous Community

The regional parliament elects a head from its members. This is the President of the Autonomous Community. This president represents the community at the highest level. Indeed, the President of autonomous community is both the

¹⁰⁴ “The Constitution of Spain”.

¹⁰⁵ Nalbant, pp. 276-277.

¹⁰⁶ Tuna, pp. 119, 130-1, Nalbant, pp. 284, 311, Guibernau, Spain, p. 61, Eryıldız, p. 94.

¹⁰⁷ Armstrong and French, p. 4.

representative of the Autonomous Community and the representative of the state within the borders of the autonomous community. The President also governs the Council of Administration and coordinates its works and functions. The President is responsible against the regional parliament.¹⁰⁸

2.2.4.4. The Council of Administration

Executive power in the autonomous region is exercised by the Council of Administration. The Council is responsible against the regional parliament. The head of the Council is the president of autonomous community elected by the regional parliament. The Council carries out administrative works of the Autonomous Community. It also prepares and administers the budget of the region.¹⁰⁹

The System of Autonomous Communities provides a representative structure for the Spanish people because they are represented at both regional and state levels. Consequently, the people's ideas about their future are more effectively transmitted to the Spanish state and their participation in the administration increases.

2.3. The Linguistic System of Spain

As regards its linguistic character, Spain can be described as a multilingual country formed under the influence of unique historical developments.¹¹⁰ According to 1978 Constitution, the official language of the State is Spanish but there also exists the right to become an official language for other languages in the autonomous communities. In terms of Article 3, *“(1) Castilian is the official Spanish language of the state. All Spaniards have the duty to know it and the right to use it. (2) The other languages of Spain will also be official in the respective autonomous communities, in accordance with their Statutes. (3) The richness of the linguistic modalities of Spain is a cultural patrimony which will be the object of special respect and protection.”*¹¹¹

¹⁰⁸ Tuna, pp. 119, 130-1, Nalbant, pp. 282-4, Guibernau, Spain, p. 61.

¹⁰⁹ Tuna, pp. 119, 131, Nalbant, p. 284, Guibernau, Spain, p. 61.

¹¹⁰ Conversi, p. 229, Carmen Pérez Vidal, “Language Teacher Training and Bilingual Education in Spain”, <http://web.fu-berlin.de/elc/tnp1/SP6NatRepES.doc> (19.01.2007).

¹¹¹ “The Constitution of Spain”.

In this context, Spanish is the only official language at the state level. However, the autonomous communities can have their own regional languages in their regions as the second official language of the region beside Spanish. The eleven autonomous communities have only one official language that is Spanish while the Balearic Islands, Basque Country, Catalonia, Galicia, Navarre and Valencia have a second official language.¹¹² Second languages are Catalan, Basque (Euskera), Galician, Valencian, and Majorcan.¹¹³

When the constitution is examined, one does not come across a clear obligation to promote or protect multilingualism. However, it is known that the state is careful in respecting both the official languages of the autonomous communities and the policies of those communities to protect and develop them. However, Spanish and other languages are not at the same level as official languages. Spanish or Castilian is the official language of all citizens (all Spaniards) and *all Spaniards have the duty to know it and the right to use it* over all Spanish territory. Other languages are used only in their regions and only as a matter of right. As Costa highlights, this situation makes Spain's multilingual structure different from classical egalitarian multilingual states because Spain resembles more a monolingual state than a proper multilingual state. In this structure, citizens are not equal as far as the language rights and duties are concerned.¹¹⁴ The region has the right of having its own language as official language over its territory. However, Spanish continues its official status alongside the regional language because Spanish is the language of the whole country. Therefore, the influence and dominance of Spanish language are maintained in the regions.

¹¹² Carmen Morales Gálvez, "Foreign Language Teaching in Spain", Ministerio de Educación, Cultura y Deporte – Centro De Investigación y Documentación Educativa, p. 1, http://www.ecml.at/documents/members/Spain_newNR.pdf (19.01.2007). For example, according to Article 3(2) of the Catalan Statute of Autonomy, "*Catalan is the official language of Catalonia, as is Castilian, the official language of the whole of the Spanish state*". "The Catalan Statute of Autonomy", <http://www.catalunya-lliure.com/estatut2.html> (15.02.2007).

¹¹³ Agranoff, p. 4.

¹¹⁴ Josep Costa, "Catalan Linguistic Policy: liberal or illiberal?", **Nations and Nationalism**, Vol.9, No.3, 2003, pp. 415-6.

Although the whole population knows Spanish, the proportion of bilingual people approximately makes up a quarter of the Spanish population.¹¹⁵ Majorcan is used as the second language in the Balearic Islands while Valencian is spoken in Valencia. The places where Catalan is spoken are Catalonia, Franja, Andorra, the South East of France and the Sardinian city of Alguer.¹¹⁶ However, the demographic structure has changed in Catalonia since the 1920s due to the Spanish immigrants. The latter speak Spanish in Catalonia while Catalans are bilingual¹¹⁷ (approximately 50,1% of the population speaks Catalan¹¹⁸). On the other hand, Basque is spoken in the Basque country referring to seven provinces (three provinces are in France and the rest are located in two autonomous communities in Spain: the Basque Autonomous Community and Navarre). Similarly, Basque became a minority language in the Basque Autonomous Community (approximately only 27% of the population speaks Basque) due to Spaniards' internal immigration. As in the case of Catalonia, Basques are bilingual but Spanish is the dominant language. Lastly, Galician is spoken in Galicia consisting of four provinces: A Coruña, Lugo, Ourense and Pontevedra. Galician is also a minority language in Galicia because of the dominance of Spanish immigrants as in the other cases. The administrations of Catalonia, the Basque Country, and Galicia seek to reverse the worsening situation of their own languages by advocating their use in public life.¹¹⁹

¹¹⁵ Moreno, Decentralization, Note:1 p. 406.

¹¹⁶ Pérez Vidal, "Language Teacher Training and Bilingual Education in Spain". This divided situation is the result of the Treaty of Pyrenees signed between the kingdoms of France and Spain in 1659. With this treaty, the historical Catalan territory was divided into two between Spain and France. Laia Balcells i Ventura, "Explaining Variation in the Salience of Catalan Nationalism Across the France/Spain Border", Paper to be presented at the 7th Annual retreat of the Society for Comparative Research to be held at the Central European University in Budapest, 3-4 July 2005, p. 3, <http://www.ceu.hu/polsci/papers/Balcells%20Laia.pdf> (05.02.2007).

¹¹⁷ Pérez Vidal, "Language Teacher Training and Bilingual Education in Spain".

¹¹⁸ The rate of speaking regional language, which is Catalan, is higher than other regional languages, because Catalan is similar to Spanish and, thus, it is easier for the Spanish immigrants to learn Catalan. Balcells i Ventura, p. 3.

¹¹⁹ Resnick, p. 11, Pérez Vidal, "Language Teacher Training and Bilingual Education in Spain", Robert E. Vann, "Language Ideology in Public Practice: Civic Movements in Catalonia", *Actas/Proceedings. II Simposio Internacional sobre o Bilingüismo/Second International Symposium on Bilingualism*, University of Vigo, October 2002, p. 1743, <http://webs.uvigo.es/ssl/actas2002/09/10.%20Robert%20E.%20Vann.pdf> (22.10.2006).

2.4. Is Spain an Example of the Regional State?

Can Spain be classified as a regional state? The answer is “yes”, because under the new structure Spain retains its feature as a unitary state while recognizing the autonomy of her regions. First of all, the constitution emphasizes the unity and indivisibility of nation, sovereignty and territory: Spanish nation, Spanish sovereignty, and Spanish territory.

Secondly, in Spain, the center has her own legislative and executive organs that are elected by the Spanish nation. These organs have jurisdiction over everyone and everywhere in Spain. The System of Autonomous Communities is not influential in the formation of these organs.

Thirdly, each autonomous community of Spain has its own legislative and executive organs, which are elected by the residents of the region, and whose jurisdictions are only limited to the region.

Fourthly, every autonomous community has its own statute of autonomy. This statute, which has to comply with the constitution, is prepared by the elected assembly of the region and cannot be amended by the central legislative organ.

Fifthly, there is the unity of judicial jurisdiction in Spain. The power to adjudicate belongs to the center. Thus, the autonomous communities of Spain do not have any adjudicatory power.

And lastly, but not the least, the autonomous communities of Spain did not have any competence at the beginning. When the System of Autonomous Communities was established with the 1978 constitution, the central administration transferred some of its competences to the Autonomous Communities. Therefore, the Autonomous Communities have been using the transferred competences. Besides, the central administration can always withdraw these competences through constitutional amendment.

As seen, Spain can be described as a regional state. It may seem similar to federal state, but she is different and there are some reasons for that. Firstly, a federal state is a composite state and it is formed by independent states. However, Spain formed her autonomous communities herself as a regional state.

Secondly, in the federal structure, the federal nation is made up of the federate nations. Also, the people in a federate state have two kinds of citizenship: the citizenship of the federate state and the federal state. However, in Spain, there is one nation: Spanish. And Spanish nation contains different nationalities within Spain. Thus, there is one kind of citizenship: Spanish citizenship.

Thirdly, in a federal state, the federal territory is the aggregation of all federate states' territories. On the other hand, since Spain is based on the indivisibility of the fatherland, there is only one territory: Spanish territory. The territory of Spain has not been formed through a process of the integration of the regions. In contrast, the regions are the creations of Spain.

Fourthly, in the federal structure, external sovereignty belongs to the federal state, while the federate states have internal sovereignty. They use their respective sovereignties independently. However, in Spain the sovereignty belongs to the Spanish people, and it cannot be divided or separated. Hence, the regions do not have any sort of sovereignty.

Fifthly, the federate states have internal sovereignty, which gives them independent adjudicatory power from the federal state. However, in Spain the autonomous communities do not have internal sovereignty and independent adjudicatory power that goes with it. The principle is the unity of judicial jurisdiction, which follows from the unitary understanding of the Spanish sovereignty.

Sixthly, while the autonomous communities of Spain have their own Statute of Autonomy, every federate state has its own constitution under federation.

Seventhly, the federate states are wholly represented in one of the two assemblies in the federal state and they fully participate in the amendment process of the constitution via this assembly. In Spain, on the other hand, the regions do not have the right of amending the Spanish constitution. Since the Spanish regions are not proportionally represented in the assemblies of the state (the representatives of the regions constitute just one sixth of the Senate members), they do not have the sufficient number to amend the constitution.

Lastly, the regions in Spain use the competences transferred by the center but the federate states in the federal state use the competences already belonging to them, because they maintain their feature as a state in the federal structure. Consequently, the Spanish administration always holds the right of withdrawing the competences transferred, but the federal state cannot intervene to the competences of the federate states.

Having explained why Spain is not a federal but a regional state, now it is necessary to explain the other important dimension of the regional state, which is regional/territorial autonomy. That will be done through the case of the BAC.

THE THIRD CHAPTER

THE BASQUE AUTONOMOUS COMMUNITY

The Basque region or country is the Basque speaking area of about 2.500.000 inhabitants. In other words, the area, which the Basque speech community occupies, forms the Basque region. The historical Basque country or region is currently divided between Spain and France. The French side of the Basque country (*Iparralde*) covers the provinces of Lapurdi, Lower Navarre and Zuberoa.¹ The whole Basque region is called as *Euzkadi*. After the de-centralization process in Spain, the southern (Spanish) part of the Basque region was separated into two autonomous communities: Navarre and the Basque Autonomous Community (BAC, *Pais Vasco* in Spanish). While Navarre consists of one province,² the BAC contains the historical territories of Araba, Gipuzkoa and Bizkaia³ (See Figure 2). The Basque Autonomous Community and Navarre form 3,6% of the Spanish territory.⁴ The population of the Basques in Spain who live in the BAC and Navarre is not much more than 6% of the Spain's population. However, the region is very important for Spain in economical terms with its ports, industries, and mineral resources.⁵

¹ Michael T. Weaver, "Protest, Radicalism and Militancy in Spain's Basque Country: The Basque Nationalist Movement and the Persistent Struggle of ETA", p. 20, <http://www.csbsju.edu/library/local/1stYear/thesis.pdf> (10.04.2006).

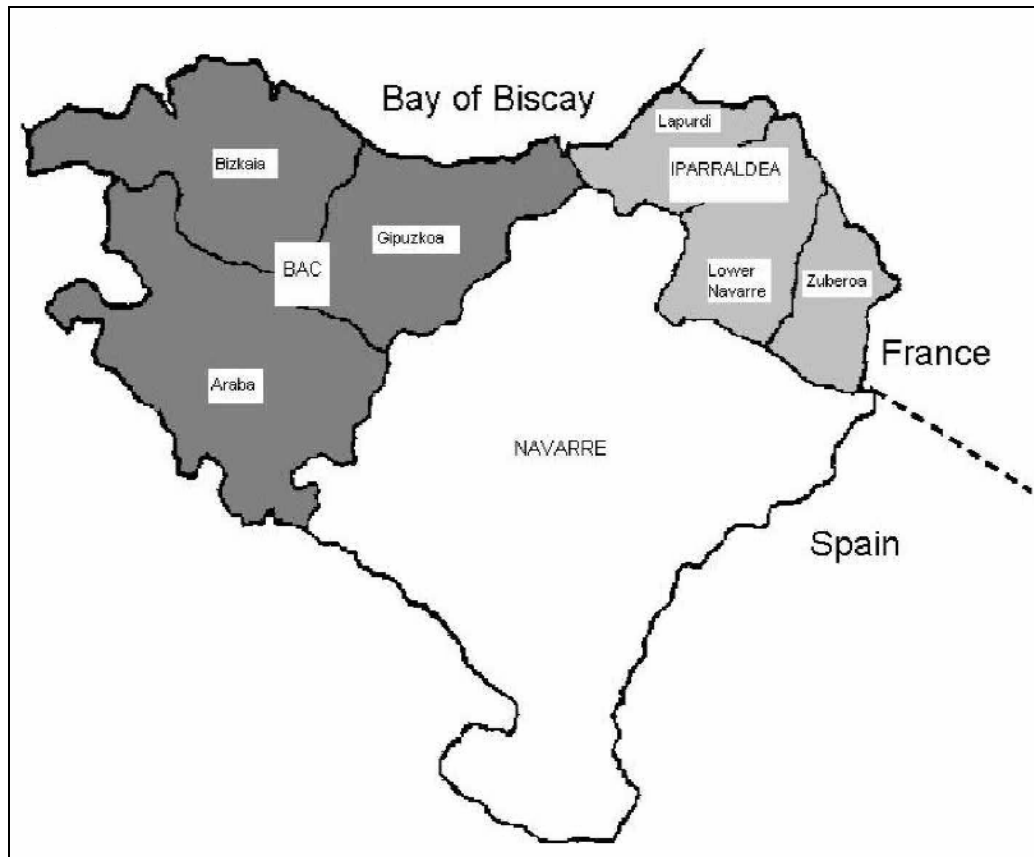
² For further information about Navarre, see Andrés Rodríguez-Pose, "Economic Convergence and Regional Development Strategies in Spain: The Case of Galicia and Navarre", **European Investment Bank Papers**, Vol.5, No.1, 2000, Box: 2, p. 95.

³ Mikel Gómez Uranga and Goio Etxerbarria, "Panorama of the Basque Country and its Competence for Self-Government", **European Planning Studies**, Vol.8, No.4, 2000, p. 521.

⁴ Tuna, p. 120.

⁵ Marvin W. Mikesell and Alexander B. Murphy, "A Framework for Comparative Study of Minority-Group Aspirations", **Annals of the Association of American Geographers**, Vol.81 No.4, 1991, p. 593.

Figure 2: The Map of the Basque Region



(Source: Lasagabaster, 2001, p. 402)

3.1. The History of the Basque Region

The history of Basques is the history of resistance and struggle for survival. That history starts with the resistance against the Wasco who is a people that emerged during the Punic Wars between Roma and Carthage (264-261 and 218-218 BC). The resistance to assimilation continued against Romans, Visigoths, Franks and Moors. Those acts of resistance provided the protection of Basque identity and resulted in the rise of the Kingdom of Nafarroa (Navarre) in the 10th and 11th centuries.⁶

⁶ Cameron Watson, "Folklore and Basque Nationalism: Language, Myth, Reality", **Nations and Nationalism**, Vol.2, No.1, 1996, p. 18.

The Kingdom of Navarre dominated the whole Basque region, which helped Basques to get integrated and form a political unity. However, the kingdom weakened in time and chaos ensued in the region.⁷ Then, the region formally became part of the Kingdom of Castile during the 13th and 14th centuries on the basis of regional *fueros* (rights or laws) providing separate legal and financial administration.⁸ Michael T. Weaver explains that “[u]sing the *fueros* enabled the Basques to exercise significant local power, to veto Spanish laws, to have their own legislative, executive and judicial institutions, and to be immune from Spanish customs duties and exempt from military service outside their own province.”⁹ In this way, Basques, though part of the Kingdom, obtained regional privileges in some areas such as economy, taxes, military service, and the like.

However, as a result of the centralization of the state, Spain abolished the *fueros* at the end of the 19th century. The Spanish administration made a number of regulations related to the Basque region as a result of the industrialization there. The following large-scale immigration of Spanish workers to the region changed the demographic structure, which in turn led to the rise of Basque nationalism against the immigrants and the centralist Spanish policies.¹⁰ The Spanish immigrants, regarded as foreigners by Basques, were named pejoratively by the locals as *maketos*¹¹ meaning lazy and sponger.¹²

As explained in the second chapter, the reaction of Basques against the abolishment of *fueros* and the centralist state policies got a nationalist, ideological and political character. The Basque nationalists like Sabino Arana used the elements

⁷ Tuna, p. 120.

⁸ Stanley Payne, “Catalan and Basque Nationalism”, **Journal of Contemporary History**, Vol.6, No.1, 1971, p. 32, Shlomo Ben-Ami, “Basque Nationalism between Archaism and Modernity”, **Journal of Contemporary History**, Vol.6, No.3/4, September 1991, p. 493.

⁹ Weaver, p. 22.

¹⁰ Şahin, pp.186-7, Gómez Uranga and Etxebarria, p. 522, Payne, p. 35.

¹¹ Milton M. da Silva, “Modernization and Ethnic Conflict: The Case of the Basques”, **Comparative Politics**, Vol.7, No.2, January 1975, p. 231.

¹² Eryıldız, p. 98.

of race and language to reinforce the Basque identity. As a result, the Basque nationalism became a part of Basque political and social life.¹³

On the other hand, Spain proclaimed the Second Republic in 1931 after the abdication of the King. In this new structure, the 1931 constitution defined Spain as a kind of federal state and permitted the establishment of regional autonomies within Spain. During the first years of the Second Republic, Basques tried to achieve territorial autonomy. In 1933 a Statute of Autonomy was prepared for the Basque region. However, that autonomy initiative failed due to the breakdown of the civil war which lasted from 1936 till 1939. During the civil war, the republicans supported by the Basque Provinces and Catalonia, and the Spanish nationalists who were opposed to the autonomy-based structure of Spain clashed. The civil war came to an end with the victory of the Spanish nationalists under the leadership of General Franco.¹⁴

Behind the Franco administration's opposition to any sub-national or anti-national movement lay its concern about the national integrity of Spain. To that end General Franco abolished the autonomous statutes of the regions, as a result of which Basques also lost their regional autonomy. In fact, the Franco administration, being aware of the Basque region's highly developed economy, regarded the integration of that region to the Spanish state as essential. Franco tried to accomplish that integration by resorting to repressive policies such as exiling the members of the Basque government of 1936, and banning the use of the Basque language.¹⁵

Cultural and nationalist movements became widespread in the Basque region as a reaction against the Franco regime in the 1960s. In response, the Franco administration produced a strategy known as *cultural policy* with a view to

¹³ Payne, pp. 35-6. For further information about the Basque nationalism, see Ben-Ami, pp. 496-503 and María Jesús Cava Mesa, "Spanish and Basque Nationalisms", pp. 91-7, http://www.stm.unipi.it/Clio/tabs/libri/3/07-Cava_79-100.pdf (04.01.2007).

¹⁴ Eryıldız, pp. 89-90.

¹⁵ Mikesell and Murphy, p. 593.

integrating the state by de-legitimizing the Basque nationalism.¹⁶ According to this policy, there was not any distinctive quality of Basque identity, because the Spanish culture involved the Basque culture through assimilation. As a result, the difference of the Basque culture was not recognized and the existence of any Basque art, literature and thought were denied.

However, those repressive policies of the Franco dictatorship led to the further radicalization of the Basque movement. The latter increasingly expressed its demand for independence or autonomy and that demand soon became widespread in the region.¹⁷ Furthermore, some Basques began to undertake violent activities by establishing a terrorist (armed) organization called as *Euskadi ta Azkatasuna* (ETA, the Basque country and Freedom)¹⁸. As a result, the Basque nationalism and violence increased in Spain.¹⁹ It is fair to argue that this situation resulted from the failure of the integrationist policies of the Franco administration.

After the death of Franco, the Spanish state was restructured. A new constitution embodying the acceptance of the regional autonomy with a view to responding to the historical demands of the regions and wiping out terrorism was drafted. The new constitution was ratified by the Spanish parliament in 1978 and approved in the regional referendum.²⁰ The Basques in Araba, Gipuzkoa and Bizkaia approved the Statute of Autonomy in 1979. With that Statute, the Basque Autonomous Community consisting of these three provinces came into being, and

¹⁶ Amaia Lamikiz Jauregiondo, "Ambiguous 'Culture': Contrasting Interpretations of the Basque Film Ama Lur and the Relationship between Centre and Periphery in Franco's Spain", **National Identities**, Vol.4, No.3, 2002, pp. 292-3, 295-6, 302.

¹⁷ Mikesell and Murphy, p. 593-4.

¹⁸ ETA has defended its use of violence so as to gain the independence of Basque country by uniting all Basque Provinces including the French side (*Iparralde*). In other words, the target of ETA is an independent Basque region consisting of seven provinces referring to four provinces in Spain (Viscaya, Guipuzcoa, Alava ve Navarre) and three provinces in France (Bas Navarre, Lapurdi, Iveroa). This target is formulated with the equation of 4+3=1. Eryıldız, p. 125. For more information about ETA, see William A. Douglass and Joseba Zulaika, "On the Interpretation of Terrorist Violence: ETA and the Basque Political Process", **Comparative Studies in Society and History**, Vol.32, No.2, April 1990 and Cindy R. Jebb, "The Fight for Legitimacy: Liberal Democracy versus Terrorism", **The Journal of Conflict Studies**, Spring 2003.

¹⁹ Şahin, pp. 187-8.

²⁰ Mikesell and Murphy, p. 594.

Basques achieved a considerable amount of autonomy within Spain.²¹ Consequently, Basques once again regained their historical autonomous position.

3.2. The Autonomous Structure of the Basque Autonomous Community

The 1978 constitution transformed Spain from a centralist state into a regional state which recognizes the autonomy of the regions. The right of autonomy for the regions is highlighted in Article 2 of the constitution. Based on this right, Basques residing in the historic territories of Bizkaia, Araba, and Gipuzkoa established the Basque Autonomous Community in 1979.

The Basque Autonomous Community (with Catalonia and Galicia) got its autonomous status as such faster than the other regions as a result of the fast procedure written in the constitution due to some reasons. Firstly, Basques (like Catalans and Galicians) have been accepted as a historically and culturally distinct element of Spain. Secondly, Basques (like Catalans and Galicians) have had self-experience and self-consciousness about autonomy. And lastly, but not the least, the former autonomous statute of Basques was abolished with force by the Franco administration. Therefore, Basques regained their autonomy without waiting for five years which is a requirement of normal procedure for other regions.²²

As stated in Article 137 of the constitution, Spain consists of municipalities, provinces, and the autonomous communities. And, the Basque Autonomous Community is one of the seventeen autonomous communities of Spain. According to Article 1 of the Statute of Autonomy of the Basque Country, *“the Basque People or «Euskal-Herria», as an expression of their nationality and in order to accede to self-government, constitute an Autonomous Community within the Spanish State under the name of «Euskadi» or the Basque Country, in accordance with the Constitution and with this Statute, which lays down its basic institutional rules.”*²³

²¹ J. P. Linstroth, “The Basque Conflict Globally Speaking: Material Culture, Media and Basque Identity in the Wider World”, **Oxford Development Studies**, Vol.30, No.2, 2002, p. 207.

²² Guibernau, Spain, p. 61, Nalbant, p. 283.

²³ “The Statute of Autonomy of the Basque Country”, http://www.nuevostatutodeeuskadi.net/docs/state_of_autonomy.pdf (10.05.2006).

In Spain, there is the unity of sovereignty which belongs to Spaniards. Therefore, the Basque Autonomous Community does not have any sovereignty in its borders. Likewise, while the legitimacy of political power of the state comes from the Spanish nation²⁴, the legitimacy of the Basque Autonomous Community depends on the 1978 constitution and the Statute of Autonomy of the Basque Country as explicitly stated in Article 1 of the Statute.

According to Article 2 of the constitution, there is the unity of nation in Spain: Spanish nation involving nationalities. Therefore, Basques within the Basque Autonomous Community does not form a nation.²⁵ On the contrary, they are defined as a historical nationality in Spain. Article 1 of the Statute of Autonomy of the Basque country refers to “*the Basque People ...as an expression of their nationality*”.²⁶ This reference in the Statute to the concept of nationality should not be confused with the concept of people referred in the right to self-determination. Due to the fact that the source of sovereignty is the Spanish nation, Basques as a nationality in the Basque Autonomous Community do not have the right of self-determination. Besides, since the determination of nationality has an operational function in Spain, the Basque nationality does not represent a minority group.²⁷ However, the Basque Autonomous Community has the right of protecting and developing Basque culture.²⁸ Concerning citizenship, Basques do not have any connection to the Basque Autonomous Community because there is only one kind of citizenship in Spain: Spanish citizenship. As a result, Basques are the citizens of Spain.²⁹

Article 2 of the constitution emphasizes also the unity and indivisibility of country. Therefore, the Basque Autonomous Community is a part/region of the Spanish territory. It is not an independent unit.³⁰ On the other hand, as a result of solidarity principle, the Basque Autonomous Community gives some of its revenue

²⁴ Nalbant, p. 272.

²⁵ Conversi, p. 228.

²⁶ “The Statute of Autonomy of the Basque Country”.

²⁷ Advisory Committee on the Framework Convention for the Protection of National Minorities, p. 3.

²⁸ Nalbant, p. 274, Teziç, p. 126.

²⁹ Conversi, p. 229.

³⁰ Nalbant, p. 27.

to the central government. The center too shares some of the national revenue with the Basque Autonomous Community.³¹

The Basque Autonomous Community has and uses its own flag alongside of Spanish flag. The Basque Country also recognizes the flags of the historic territories which make up the Autonomous Community. These all find expression in Article 5 of the Statute of Autonomy of the Basque Country.³²

Concerning the nature and degree of autonomy it has, the Basque Autonomous Community has a mixed profile. It has political autonomy, which denotes having legislative and executive powers in certain areas within its borders.³³ The Community also has financial autonomy. It can put regional taxes in the accordance with the constitution and laws, and receive revenue from the budget of the central government. However, the Exchequer and Audit Department of the state supervise the financial activities of the Basque Autonomous Community. On the other hand, concerning judicial autonomy, the Basque country does have autonomy as such. Since the judicial system of Spain is based on the unity of judicial jurisdiction, the Basque Autonomous Community cannot exercise any adjudicatory power over its region.³⁴

As to the competences of the Basque Autonomous Community, it has the competences enumerated in Article 148 of the constitution. The areas over which the Basque Autonomous Community has jurisdiction are also stated in Articles 10, 11 and 13 under the Title I of the Statute.³⁵ Agriculture, tourism, health, education, the control of government institutions, public infrastructure, and a host of social, economic, and environmental matters are among its competences.

³¹ Teziç, pp. 126-7.

³² “The Statute of Autonomy of the Basque Country”.

³³ Enric Martínez-Herrera, “Nationalist Extremism and Outcomes of State Policies in the Basque Country, 1979-2001”, *International Journal on Multicultural Societies*, Vol.4, No.1, 2002, p. 8.

³⁴ Nalbant, pp. 278, 280.

³⁵ “The Statute of Autonomy of the Basque Country”.

Concerning the policing, the administration of the regional police force in the three provinces belongs to the Basque Autonomous Community. According to Article 17(1) of the Statute, “...responsibility shall lie with the institutions of the Basque Country, in the manner set out in this Statute, for the general organization of the Autonomous Police Forces in respect of the protection of persons and property and the maintaining of public order within the autonomous territory...”³⁶ Article 17(2) of the Statute also emphasizes that “supreme command of the Basque Autonomous Police Forces shall lie with the Government of the Basque Country...”³⁷ Therefore, the Basque government has the supreme authority over the regional police force. However, the Basque Autonomous Police Forces do not eliminate the presence of the State Security Forces and Corps of Spain within the Basque country. The coordination between them is provided through a joint security council. This is expressed in Article 17(4) of the Statute: “for the sake of co-operation between the Autonomous Police Forces and the State Security Forces and Corps, there shall be a Security Council consisting of an equal number of representatives of the State and of the Autonomous Community.”³⁸

In the financial area, the Basque Autonomous Community has an exceptional competence. This exception or privilege refers to the decision-making capacity of the BAC to administer a large part of the earnings coming from taxation and public expenses. This, in turn, enables the Basque Autonomous Community to prepare its own technological and industrial plans. The agreement providing this financial privilege to the BAC is known as *Economic Arrangement* (Concierto Económico).³⁹

However, it should not be forgotten that the competences of the BAC are transferred by the center. If not, the BAC does not possess any competence in any issue. As seen in Article 20(1), “the Basque Country shall have legislative and executive powers in whatever other matters are transferred to it by Organic Law or

³⁶ “The Statute of Autonomy of the Basque Country”.

³⁷ “The Statute of Autonomy of the Basque Country”.

³⁸ “The Statute of Autonomy of the Basque Country”.

³⁹ Gómez Uranga and Etterbarria, p. 523, Hannum and Lillich, p. 882, Agranoff, pp. 4-5. See Article 41, “The Statute of Autonomy of the Basque Country”. Also see Carlos Lámbarri, “Fiscal Policy in Europe: the Case of the Basque Country”, *European Business Review*, Vol.95, No.4, 1995, pp. 10-2.

which are delegated to it by the State in accordance with the Constitution, at the request of the Basque Parliament.”⁴⁰ The administration of Spain has transferred some competences to the BAC, but it always reserves the right to withdraw them through constitutional amendment.

The Basque Autonomous Community cannot have its own constitution. It can only have a statute. As seen in Article 147(1) of the constitution, the BAC has the right of preparing its statute. The Statute of Autonomy of the Basque Country drafted by the assembly of the BAC entered into force with the approval of national parliament in 1979 in line with the principles stated in Article 147(2) of the constitution. As explained in the second chapter, this legally makes the Statute of Autonomy of the Basque Country inferior to the constitution, as it must be compatible with the constitution. However, the Statute of Autonomy cannot be altered by the national parliament.⁴¹ This can only be realized through a legal process involving the joint participation of the BAC and the center.⁴² Firstly, the members of Basque parliament, Basque government or the national parliament must give a proposal of change. Secondly, both the Basque parliament and the national parliament must approve this proposal. Lastly, the residents of the BAC must approve the latter in a referendum.⁴³

According to Article 24(1) of the Statute, *“the powers of the Basque Country are exercised through the Parliament, the Government and its President or Lendakari.”*⁴⁴ First of all, it can be said that there is only one assembly in the Basque Autonomous Community: the Basque parliament. According to Article 25(2) of the Statute, *“the Basque parliament is inviolable.”*⁴⁵ The members of parliament are regionally elected for four years. This is explained in Article 26 of the Statute: *“1. The Basque Parliament shall be composed of an equal number of representatives of each Historic Territory elected by universal, free, direct and secret suffrage. 2. The*

⁴⁰ “The Statute of Autonomy of the Basque Country”.

⁴¹ Teziç, p. 127.

⁴² Nalbant, p. 311.

⁴³ See Article 46(1), “The Statute of Autonomy of the Basque Country”.

⁴⁴ “The Statute of Autonomy of the Basque Country”.

⁴⁵ “The Statute of Autonomy of the Basque Country”.

*electoral district is the Historic Territory. 3. Elections shall be held in each Historic Territory in accordance with criteria of proportional representation. 4. The Basque Parliament shall be elected for a period of four years.”*⁴⁶

The parliament has a number of important functions: it represents all the Basques in the Basque Autonomous Community; it exercises legislative power within the borders of the BAC; it approves the regional budget; it elects the president of the BAC from among its members; it gives interpellation against the Basque government; it controls the works and functions of the government; it approves the agreements made with other autonomous communities; it appoints the senators who are to represent the Basque Autonomous Community in the Senate; it can apply to the constitutional court about the regional laws if necessary; and it can ask the central government to enact laws which are necessary for the Basque Autonomous Community. These are all expressed in Articles 25, 27, and 28 of the Statute.⁴⁷

As explained in the second chapter, the assemblies of the autonomous communities elect fifty senators of the Senate. The members of the Basque parliament thus have the power of electing the Senators of the Basque Autonomous Community. However, the BAC is not influential in the amendment process of the constitution, as the representation level of the regions is low in the Senate.

The Senate has specific competence on the Basque Autonomous Community as an autonomous community. If the BAC does not fulfill its legal and constitutional liabilities that are necessary for the general interests of Spain, it can be forced to carry out its responsibilities by a decision of the Senate taken with absolute majority.⁴⁸

Also there is the constitutional control over the laws enacted by the assembly of the Basque Autonomous Community. The Spanish Constitutional Court supervises and checks the compliance of the regional laws of the BAC with the

⁴⁶ “The Statute of Autonomy of the Basque Country”.

⁴⁷ “The Statute of Autonomy of the Basque Country”. See also Tuna, pp. 130-1.

⁴⁸ Teziç, p. 127, Tuna, p. 112.

constitution. It is stated in Article 38(1): *“The laws of the Basque Parliament shall be subjected to control for their Constitutionality by the Constitutional Tribunal only.”*⁴⁹ Also, when there emerges a dispute between the BAC and the central government concerning the extent of the competences, the Constitutional Court has the authority of final judgement.⁵⁰

On the other hand, the President of the Basque Autonomous Community represents the Basque country at the highest level. S/he is elected by the Basque parliament and symbolically appointed by the King. S/he is both the representative of the BAC and the representative of Spain within the borders of the BAC. The president has the powers to appoint and dismiss the Government Councilors, and to govern and to coordinate the policies and functions of the Basque government. S/he is responsible to the Basque parliament.⁵¹

In the Basque Autonomous Community, the Basque government exercises the executive power⁵² and is responsible for its actions to the Basque parliament.⁵³ Also, according to Article 30 of the Statute, *“the powers of the Government and its organization, based on a President and Councilors, and the Statute of its members, shall be regulated by the Parliament.”*⁵⁴ The president of Basque Autonomous Community is the head of the Basque government. The Basque government fulfills administrative functions of the BAC, makes technological and industrial plans, prepares the budget and implements it.⁵⁵

The Basque Autonomous Community has the right of entering into agreements with other autonomous communities of Spain. According to Article 22(1) of the Statute, *“the Autonomous Community [the BAC] may conclude agreements with other Autonomous Communities for the management and provision of services*

⁴⁹ “The Statute of Autonomy of the Basque Country”.

⁵⁰ Nalbant, pp. 276-7.

⁵¹ See Article 33, “The Statute of Autonomy of the Basque Country”.

⁵² See Article 29, “The Statute of Autonomy of the Basque Country”.

⁵³ See Article 32(1), “The Statute of Autonomy of the Basque Country”.

⁵⁴ “The Statute of Autonomy of the Basque Country”.

⁵⁵ Tuna, p. 131.

*falling under their exclusive jurisdiction. The concluding of such agreements must be communicated to the Spanish State Parliament before they become effective....”*⁵⁶

A government delegate is represented in the Basque government and is responsible for the coordination between the Basque Autonomous Community and the central administration. Article 154 of the constitution states: “A *delegate appointed by the Government shall direct the administration of the State in the territorial area of each Autonomous Community and shall coordinate it, when necessary, with the Community's own administration.*”⁵⁷ This situation is also repeated in Article 23(2) of the Statute.⁵⁸

As the above explanation suggests, the Basque Autonomous Community and its autonomous order were created by the constitution of the state and the Statute of Autonomy. Spain and the BAC fulfill their respective tasks and responsibilities. When a dispute arises between them, they may apply to the Constitutional Court to resolve it. The system continues to function based on that understanding.

3.3. The Position of the Basque Language

One of the main symbols representing Basque identity is the Basque language. This language is one of the oldest languages in Europe. Also, Basque is the only pre-Indo-European language in Spain and has very different characteristics from Spanish.⁵⁹

In the 18th century, the use of Basque in the Basque region decreased because of two reasons. Firstly, Castilian monarchy declared Spanish as the only official language of the monarchy in 1716 in Spain. Secondly, French was accepted as the only official language of the Republic after the French Revolution in 1789.

⁵⁶ “The Statute of Autonomy of the Basque Country”.

⁵⁷ “The Constitution of Spain”.

⁵⁸ “The Statute of Autonomy of the Basque Country”.

⁵⁹ Goldie Shabad and Richard Gunther, “Language, Nationalism, and Political Conflict in Spain”, **Comparative Politics**, Vol.14, No.4, July 1982, p. 446, Kenneth Craig Dobson, “The Spanish Government’s Ban of a Political Party: A Violation of Human Rights?”, **New England Journal of International Law and Comparative Law**, Vol.9, No.2, 2003, p. 638.

Consequently, the use of other languages including Basque was forbidden in both Spain and France. On the other hand, the trend in the decline of the use of Basque continued with the industrialization. The large-scale immigration of non-Basque speaking Spaniards to the Basque region changed the demographic structure to the advantage of Spanish speakers. Besides, the industrialization increased the urbanization of Basques and along with that the demand for Spanish. Basques, who had not needed to learn and use Spanish before the urbanization, increasingly felt such a need in order to get a place in the social life of the urban areas.⁶⁰

The attempts to develop the learning and use of Basque took place in the early 1900s. However, these attempts were interrupted in 1937 with Franco's coming to power after the civil war. As the first step of its linguistic policy, the Franco regime forbade the use of Basque in every single social sphere. As a result of the influences of both the migration of Spaniards and Franco's repressive policy, the number of Basque speakers at the beginning of the 20th century declined from 83% of the population in the Basque Autonomous Community to 24% in the 1970s. On the other hand, with the 1978 Spanish constitution and the 1979 Basque Autonomy Statute, Basque got co-official status with Spanish in the BAC. Also, there has been official support, legal framework and resources for the development of the learning and use of Basque since then.⁶¹

As explained in the second chapter of the study, Spain is formally a bilingual country and there is an autonomous status in the field of language. A regional language is a formal speaking and writing language within the region where it is used. According to the 1978 constitution, Castilian language (*Castelano*: Spanish) is the formal language of the state. Learning and using it are respectively the task and the right of all Spaniards. Besides, other languages of Spain are formal in their respective autonomous communities as stated in their own autonomy status. In this context, Basques have their own mother-tongue and the Statute of Autonomy of the Basque Country explains the position of Basque language. According to the Statute,

⁶⁰ David Lasagabaster, "Bilingualism, Immersion Programmes and Language Learning in the Basque Country", **Journal of Multilingual and Multicultural Development**, Vol.22, No.5, 2001, p. 403.

⁶¹ Lasagabaster, pp. 403-4.

as the language of Basque people, Basque has the formal language character of the Basque Autonomous Community as Castilian. All citizens have the right of learning and using these two languages. Moreover, the institutions of the Basque Autonomous Community hold responsibility for facilitating the use of the two languages. These are all expressed in Article 6 of the Statute: “1. ‘Euskera’, the language of the Basque People, shall, like Spanish, have the status of an official language in Euskadi. All its inhabitants have the right to know and use both languages. 2. The common institutions of the Autonomous Community, taking into account the socio-linguistic diversity of the Basque Country, shall guarantee the use of both languages, controlling their official status, and shall effect and regulate whatever measures and means are necessary to ensure knowledge of them. 3. No-one may suffer discrimination for reasons of language.”⁶² However, as mentioned before, the positions of Spanish and Basque are not the same, because Spanish is the official language of the whole country while Basque is used only in the Basque Autonomous Community (and Navarre). Therefore, Spanish continues its dominant status in the BAC.

Lasagabaster conveys the results of a research carried out in the Basque Autonomous Community by the Basque Statistics Institute in 1994. For the purpose of that research, language speakers are divided into three categories. The first group contains the Basque speakers who are made up of fluent Basque speakers. The second one includes the quasi-Basque speakers who can speak Basque with difficulty and who can understand it well or reasonably well. In the last category, there are the Spanish speakers who can neither speak nor understand Basque. The findings of that research regarding “a comparison of the number of speakers in each of these groups in 1981 and 1991” are given in Table 2. Although there is a steady/small increase in the use of Basque, the Basque language is still a minority language.⁶³

⁶² “The Statute of Autonomy of the Basque Country”. See also Eryıldız, pp. 100, 132-5.

⁶³ Lasagabaster, pp. 404, 406.

Table 2: A comparison of the number of speakers in each of these groups in 1981 and 1991

The Basque Autonomous Community	1981		1991	
	Speakers	Percentage	Speakers	Percentage
Basque Speakers	447.776	21.56	542.387	26.22
Quasi-Basque Speakers	300.394	14.47	350.454	16.94
Spanish Mono-linguals	1.328.278	63.97	1.176.086	56.84
Population older than 2	2.076.448		2.068.927	

(Source: Lasagabaster, 2001, p. 404)

That research confirms the reality about the Basque language: the development of Basque mostly depends on the Basque government's support which is essential and indispensable. Also, education plays an important role in the survival of the Basque language. Besides, the governments have been using television broadcast for the development of Basque.⁶⁴ However, several measures adopted by the BAC to increase the use of Basque can never guarantee an increase in the social use of Basque. The most important reasons for the latter are that most of the jobs require the knowledge of Spanish in the BAC and that most of the Spanish speakers do not learn Basque because it is a difficult language to learn.⁶⁵

3.4. Is the BAC an Example of the Regional Autonomy?

The answer to the question of whether the Basque Autonomous Community can be described as a regional/territorial autonomy is "yes". It is classified as an autonomous region, because it has the right to exercise a limited power over its territorial borders. The BAC is culturally distinct from the other parts of Spain and has the independence of action at the regional level. The Basque Autonomous Community can be examined on the basis of five principles that were put forth by Hannum and Lillich to study autonomous territories. Firstly, the BAC has a

⁶⁴ For example, low-budget soap operas became the most successful tool of an educational campaign to familiarize Basques with their own language. Associated Press, "Soap Opera in Spain Promotes Use of Basque Language", **Christian Science Monitor**, Vol.88, Issue.15, 15.12.1995, p. 14.

⁶⁵ Shabad and Gunther, p. 446. Lasagabaster, pp. 404, 406.

regionally elected body: the Basque parliament. The latter has some independent legislative power, which is, nevertheless, constitutionally limited. The Basque parliament can use its authority on certain regional matters, and its decisions cannot violate the constitution. Secondly, the BAC has regionally elected executive bodies: the president and the Basque government. These implement the regional and national laws. Thirdly, contrary to Hannum and Lillich's presumption that autonomous territory has an independent judicial organ with regional jurisdiction, the BAC does not have adjudicatory power. Thus, the courts in the Basque Autonomous Community represent the Spanish state and reflect the sole jurisdiction of the Spanish judiciary. Fourthly, the Statute of Autonomy of the Basque Country does not involve the fundamental competences of the central government. Certain issues such as foreign relations, national defense, security of borders, and general economic policy fall under the authority of the central government of Spain. The Basque government does not intervene to the policies related to these issues. In addition, only the national parliament of Spain has the power of making amendments in the constitution. Lastly, concerning the issue of consistency and continuity in the share of competences between the Spanish government and the Basque government, the BAC can exercise its competences only within its borders. On the other hand, the competences of the Spanish government can be exercised over the whole country. However, the center no longer exercises a competence that it has transferred to the Basque Autonomous Community on the basis of the constitution.

As mentioned in the first chapter, these five principles of Hannum and Lillich help determine whether an autonomous structure is a regional autonomy. However, they are not binding. The case of the Basque Autonomous Community does not meet one of the principles, while it confirms the rest. Therefore, it can be concluded that the Basque Autonomous Community has sufficient qualities to be described as a regional autonomy.

On the other hand, the Basque Autonomous Community can be likened to a federate state in the federation. However, it is different from the federate state and cannot be called as such. A federate state is the constituent unit of the federal state. It

transfers its external sovereignty to the federal state and continues to maintain its other state characteristics in the federal structure. It keeps and uses its internal sovereignty as its natural right. Therefore, it uses its own competences. On the other hand, the Basque Autonomous Community is not a constituent unit of Spain. To the contrary, the administration of Spain has created the BAC by transferring some administrative competences of the center to it. Consequently, the Basque Autonomous Community uses the competences granted by the center. The Spanish administration keeps always the right of withdrawing all of the competences that it transferred. For these reasons, the Basque Autonomous Community is not a federative unit in Spain. Conversely, it is clear that the BAC is an example of the regional autonomy.

CONCLUSION

State, when compared to other political entities, is relatively an old entity. It has been differently organized during history with the result that different state forms have come into being. Some state forms disappeared. Some state forms survived. The first chapter of this study attempted to explain the state forms with a focus on both the regional state which is a relatively new form of the unitary state, and the concept of autonomy, especially the regional autonomy which is related to the regional state. Also, the state structure of the Kingdom of Spain as a case of the regional state, and the autonomous structure of the Basque Autonomous Community of Spain as a case of autonomy were examined respectively in the second and third chapters.

The concept of state is related to three essential elements: sovereignty, territory and nation. The nature of relationship among them determines the form of state. On the basis of their structure, states are classified into two fundamental forms: unitary state and composite state.

The unitary state refers to the state form in which state does not share its power with any other state. There is the unity and indivisibility of nation (community), sovereignty, and territory (country). This provides the unity and indivisibility of state. There are three types of the unitary state: the centralist unitary state, the unitary state with local governance, and the regional state.

The state form in which all competences and the authority are united at the center is named as the centralist unitary state. Under this structure, the centre carries out all tasks of the state. This form has some public benefits, e.g. direct and easy access to the financial resources needed for public services. However, this type of structure has also certain drawbacks resulting particularly from cumbersome bureaucracy, which may force the centralist unitary state to transform itself into the unitary state with local governance. In the unitary state with local governance, different institutions are set up alongside of central authority. Local municipalities

can be given as an example of these institutions. The important point in this state form is that local administration is voted into office by residents of that locality. The unitary state with local governance is an alternative to the centralist unitary state, as it may eliminate some of the drawbacks of the centralist formation. For example, it decreases bureaucracy. Yet, this does not mean that it has no disadvantages. The oft-encountered scarcity of financial resources of local administration is the most significant disadvantage. Nonetheless, notwithstanding its negative traits, the unitary state with local governance is much more democratic than the centralist unitary state, because it facilitates and enables larger participation. Besides, it should be emphasized that the presence of local administrations alongside of central administration does not harm the unitary feature of the state, because their presence does not harm or eliminate the unity and indivisibility of state's sovereignty, territory and nation.

On the other hand, the regional state is a relatively new form of the unitary state. It emerged in the 20th century to respond to the regional demands coming from within states, which further gained momentum by globalization. In the constitution of the regional state, two opposite elements are combined: the unity of state and the recognition of the regional autonomy. The principle of the unity of state ensures the unity and indivisibility of sovereignty, territory and nation of the state: sole sovereignty, sole territory, and sole nation. In this way, autonomous region is not defined as a sovereign entity with distinct nation or people and, thus, does not harm the unitary feature of state. A regional state is still an indivisible unit with its sovereignty, its nation, and its territory. Also, the residents of an autonomous region do not have the right of self-determination, because they are not accepted as a different people within the state.

The center of the regional state has legislative, executive and judiciary power on every person and every place over the whole country. Legislative power is carried out by national parliament which generally consists of two assemblies. These assemblies are constituted via elections in which all citizens of the state participate. As a result, regional fragmentation does not influence the formation of these

assemblies. On the other hand, central government exercises executive power, while independent courts hold judiciary power in the name of the state.

Meanwhile, autonomous region of the regional state has legislative and executive power on every person and every place but only in its limited borders, and only in the areas delineated by state constitution. While regional assembly whose members are regionally elected exercises legislative power, regional government uses executive power. However, regional authorities do not have adjudicatory power due to the unity of judicial jurisdiction.

Every autonomous region has its own statute of autonomy which is prepared by regional assembly. This statute resembles constitution, but it has, in terms of legal hierarchy, a lower status, as it must comply with constitution. The center cannot amend the statute. Yet, the latter is subject to the supervision and control of the Constitutional Court of the state.

It should be emphasized that regions use the competences transferred by the central administration. The center always has the right of taking them back with an amendment in the constitution. As explained in the first chapter, regions cannot participate in the process of constitutional amendment, because they are not represented in the national assembly. Besides, the competences, which are transferable, must be clearly stated in the constitution. The basic competences related to state such as foreign policy, defense, and economic management belong to the center, while competences concerning issues such as culture, environment, sport and agriculture belong to autonomous regions.

In the context of the regional state, the concept of autonomy gains importance. Indeed, autonomy emanates from the idea that a group feeling itself different from the majority within a state should be protected. Accordingly, the concept of autonomy has several dimensions: cultural, local and territorial. While cultural autonomy refers to the right of ethnic group to have separate schools, religious organizations, and social institutions, local autonomy involves the

establishment of local administration institutions. Therefore, local autonomy is related to the unitary state with local governance. On the other hand, the regional (territorial) autonomy refers to the right of a region in a state to exercise limited power in its own borders.

Among these it is the regional autonomy that transforms the structure of the state into the regional state. That transformational characteristic of the regional autonomy is a cause of concern for states, as they generally regard such autonomy as region's first step towards secession. At this point, the concept of self-determination enters into the picture, because states believe that regions may demand the right of self-determination. However, it should be emphasized that self-determination is the right recognized by international law for peoples, not regions. And, residents of regions are not defined as a people. They are generally called as nationality. As a result of the unity of nation, they cannot form a nation. Consequently, one should not hastily jump to the conclusion that the regional autonomy easily results in the independence of the region.

The second main state form is the composite state which is constituted by more than one state. The personal union, the real union, confederation, and federation are the types of the composite state. In today's world, the personal and real unions, which were the products of monarchical structures, no longer exist. As to confederation, it is set up by states via an agreement. However, constituent states known as confederate states transfer their authority only in the areas of foreign affairs and national security to confederation. Therefore, confederation is a weak state structure.

The most common form of the composite state is federation. Federate states form the federal state by voluntarily transferring some of their sovereign authority (external sovereignty) to the federal state. Yet, federate states continue to preserve their state quality. Therefore, they are named as federate *states*. Both federal state and federate state have its own legislative, executive and judicial organs. Yet, federal state has the authority over the whole country, while federate state's jurisdiction is

limited with its territory in line with its internal sovereignty. Also, both federal state and federate state have its own constitution. Besides, federal state, unlike confederation, takes its power from the federal constitution.

It should be clarified that the regional state is not federal state and that autonomous regions of the regional state are not federate states. First of all, the regional state is a form of the unitary state, while federal state is a composite state form. Secondly, autonomous regions do not have sovereign power and they only use the transferred competences. However, federate states exercise power originating from their internal sovereignty. Also, in the regional state, autonomous regions are entities created by the central administration. Yet, in federation, federate states create the federal state, not vice versa. Besides, federate states have their own constitutions, while autonomous regions prepare their statute of autonomy. Furthermore, autonomous regions are deprived of adjudicatory power, while federate states can exercise it within their borders. Lastly, there is not any relationship of citizenship between autonomous region and its residents. However, there are two types of citizenship in the federation: citizenship of federal state, and citizenship of federate state. These differences should suffice to prevent the confusion between the state and sub-state forms in question.

After all these discussions about state forms, the regional state, autonomy and self-determination in the first chapter, the case of the Kingdom of Spain was examined in the second chapter.

The Kingdom of Spain is a good example of the regional state. Spain transformed her state form from the centralist structure into the regional state with the 1978 Constitution which embodies the understanding of *coffee for everyone*. In this way, the System of Autonomous Communities containing seventeen autonomous communities was established, and Spain became *Estado de las Autonomias*.

As the fundamental basis of the Spanish transition, the 1978 Constitution includes two distinct elements. One of them is the unity of state, while the other is

the recognition of autonomy. In other words, the constitution is a combination of unity and diversity. The principle of the unity of state refers to three important components. Firstly, there is the unity and indivisibility of Spanish nation in Spain. Secondly, there is also the unity and indivisibility of sovereignty which belongs to Spaniards. Lastly, the Spanish territory cannot be divided as a result of the principle of the unity and indivisibility of territory. By virtue of these principles, the Kingdom of Spain maintains its unitary feature.

The constitution of Spain also recognizes the right of autonomy of regions. This recognition means that the regions of Spain as parts of the Spanish country have the right of establishing autonomous communities within Spain. Besides, the constitution allows the residents of the regions to call themselves as nationality. The region names its residents as nationality in its statute of autonomy. Therefore, nationality and region are used in the same meaning the constitution. Also, nationality is the product of regional assembly and it does not represent any nation, any people or minority group in Spain. It has just a function. When this situation is taken into consideration along with the principle of the unity of nation, it is possible to arrive at some conclusions. Firstly, the nationalities do not have the right of self-determination, because they are not a separate people in Spain. Secondly, as the residents of the autonomous communities, the nationalities are included within the Spanish nation. Lastly, the nationalities do not have any citizenship ties to their regions because they are citizens of Spain.

On the other hand, the Spanish state system is a constitutional monarchy. Although the monarchical sovereignty is excluded in the constitution as a result of the unity of sovereignty being vested in the Spaniards, the King is the symbolic head of the Kingdom of Spain. However, the head of the national government is the Prime Minister. S/he exercises executive power with the Council of Ministers. When it comes to legislative power, there is a bicameral system: the Congress and the Senate. They together constitute national parliament that represents the whole Spanish nation. Autonomous communities send fifty senators to the Senate. This number is just one sixth of the Senate members. Consequently, there is not any assembly

providing the full representation of autonomous communities at the centre of Spain. As to judicial power, the power to adjudicate belongs only to the center in Spain and is exercised via independent courts. In other words, the autonomous communities are deprived of judicial power.

Every autonomous community of Spain has legislative and executive power. Legislation is made by the regional parliament. However, the President of the Autonomous Community and the Council of Administration represent the executive power. However, it should not be forgotten that the autonomous communities use the competences transferred by the central administration. Besides, autonomous communities have their own statute of autonomy. These statutes cannot be changed by the central administration but they must be compatible with the constitution of Spain.

In the System of Autonomous Communities, autonomous communities have the right of using their regional language in their borders as the official language alongside of the official language of Spanish (Castilian). Therefore, the Kingdom of Spain can be described as multilingual state. There are five regional co-official languages in Spain: Basque, Catalan, Galician, Valencian, and Majorcan. However, the dominance of Spanish is clear in the autonomous communities possessing official regional language.

It should be emphasized that Spain is not a federal state. She maintains its unitary feature despite the presence of autonomous communities. There are only one nation, only one sovereignty, and only one country. Besides, there is one kind of citizenship. Also, Spain has not come into existence as a result of the unification of autonomous communities. On the contrary, she has created them. Furthermore, there is the unity of judicial jurisdiction in Spain. Moreover, the legislative assemblies at the center represent the whole country, not regions. Lastly, in Spain, it is the central administration that transfers certain competences to the autonomous communities. She does not transfer any competence that already belongs to the autonomous communities. In other words, autonomous communities do not have their own

competences unless transferred by the center. Thus, Spain uses her own competences as she wishes. These all clearly explain why Spain is not a federal state.

Therefore, the Kingdom of Spain can be defined as a regional state, because she carries its characteristics. The historical experiences of Spain forced her to be organized in a state form consisting of autonomous communities. That system has been functioning since 1978.

The case of the Basque Autonomous Community as an autonomous structure in Spain was analyzed in the third chapter.

Today's Basque Autonomous Community is the result of the Basque history which is one of resistance and survival. The Basques finally achieved their autonomy in 1979. Navarre which is a part of the historical Basque region is not included in the Basque Autonomous Community and has become an autonomous community on its own in 1982.

As an autonomous community of Spain, the Basque Autonomous Community benefits from the rights given by the 1978 constitution to autonomous communities. The BAC derives its legitimacy from the Spanish constitution because it is a product of the constitution. Therefore, Basques are not the source of legitimacy of the Basque Autonomous Community. This situation indicates that the BAC does not have sovereignty in its borders. As mentioned, there is the unity of sovereignty in Spain, which belongs to Spaniards only.

In the Statute of Autonomy of the Basque Country and the constitution of Spain, Basques residing in the Basque Autonomous Community are named as nationality. As a result, they do not form a Basque nation, Basque people, or Basque minority group. This condition generates some important results. Firstly, there is not institution of citizenship in the BAC; Basques are not the citizens of the Basque Autonomous Community. As a consequence of the unity of Spanish citizenship, the residents of the BAC are the citizens of Spain. Secondly, Basques do not have the

right of self-determination, because self-determination is a right that belongs to peoples, and Basques are accepted as a nationality, not a people. Basques can claim that they are a people, but it remains as a claim, because Spain has a constitution which clearly states that there is only one people: Spanish people. Also, Basques as a nationality are included within the Spanish nation. The constitution does not separately define Basques as a people. Until the time Basques are named as a people in the constitution, they will not be accepted as a people.

On the other hand, the Basque Autonomous Community does not have sovereign territory that is recognized internationally. This is the result of the unity and indivisibility of the Spanish country. The BAC is an indissoluble part of Spain. The presence of autonomy does not make the Basque Autonomous Community an independent unit. Consequently, it can easily be argued that the Basque Autonomous Community is not a state. It does not carry the main characteristics of state: sovereignty, territory, and nation. Sovereignty belongs to Spaniards; the territory of the Basque Autonomous Community is included in the country of Spain; and Basques residing in the BAC are included within the Spanish nation.

As an autonomous community, the Basque Autonomous Community has its Statute of Autonomy. This statute was prepared by the elected Basque parliament, and entered into force in 1979. It determines the autonomous structure of the Basque Autonomous Community. It is (and must be) consistent with the Spanish constitution and is subject to it. The Statute cannot be amended by the central administration unilaterally. Amendment can only be made if the center and the Basque Autonomous Community reach a consensus in that respect. The proposal for amendment can be given by the members of the Basque parliament, the Basque government or the national parliament. For that proposal to be valid, it should be approved by both the Basque parliament and the national parliament. Finally, for the amendment to enter into force, Basques, who are the residents in the Basque Autonomous Community, must accept the proposal in a referendum.

The Basque Autonomous Community has the power of legislation and executive. Legislative organ is the Basque parliament while executive organ is the Basque government and the President of the BAC. These organs carry out the competences transferred to the BAC. The BAC does the regional policing itself and has its own forces in that respect. The administration of the regional police forces is a transferable competence, but just the BAC, Navarre, and Catalonia transferred this competence from the central administration. Additionally, the BAC has some exceptional competences in financial area concerning the administration of taxes. The origin of this privileged position is the historical rights of Basques called *fueros*.

The Basque Autonomous Community has not got judicial power. The courts in the territory of the BAC represent the authority of the Spanish state. On the other hand, the laws enacted by the Basque parliament are subject to the control of the Constitutional Court. The latter of Spain also resolves the disputes between the Basque Autonomous Community and the central administration concerning the share of the competences.

The Basque Autonomous Community is a bilingual autonomous community. The Basque language is recognized as the co-official language with Spanish in the Basque country. However, the use of Basque has declined because of the past repressive policies of the centralist governments, industrialization, urbanization, and the Spanish immigrants. The administration of the BAC seeks to promote the learning and use of Basque, as the language reinforces the Basque identity. Yet, Basque has a disadvantageous position because of Spanish dominance. Also, it is hard to learn Basque and there is no obligation to learn Basque for foreigners.

The Basque Autonomous Community is not a federate structure in Spain, because it is not a constituent unit of Spain and does not have internal sovereignty in its borders. The BAC uses the transferred powers, and the central administration can always withdraw them via an amendment in the constitution. As explained, the Basque Autonomous Community cannot participate in the process of constitutional amendment in the national parliament.

The Basque Autonomous Community has been carrying the features of the regional autonomy since 1979 within Spain with a regionally elected assembly (the Basque parliament), regionally elected executive (the Basque government and the President of the BAC), and its competences written down in the constitution.

As mentioned above, states are generally worried about the regional autonomy because of the probability of secession. In the case of Spain, she allowed the establishment of autonomous communities to eliminate this probability. The constitutional system of Spain legally excludes the right of self-determination for her autonomous communities. The understanding of *coffee for everyone* is valid. In this framework, the regional state system of Spain has been continuing to function since 1978.

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