

The legal point of view: compliance with Law 21/2005, of 17 November

Throughout the first quarter of 2006, the community of archivists experienced moments of some euphoria: it was the time of the arrival of the documentation of the Second Republic Government of Catalonia in the National Archive of Catalonia, the opening and huge public success of the exhibition on "the return of the confiscated documents to Catalonia", the AAC was congratulating itself because technical criteria had been imposed on the "Salamanca Papers" affair and most people were under the impression that this irregular situation was all but resolved.

However, a year and a half later, it seems that the second paragraph of the Bulletin of the time (number 78, March 2006) was indicative of things to come: "*...aquesta editorial potser no serà l'última, atès que encara resten pendents de retorn els documents privats d'associacions, sindicats, partits polítics i particulars, així com els d'ajuntaments i municipis catalans.*"¹

Despite the passing and entry into force almost two years ago now of Law 21/2005 of 17 November on the restitution to the Government of Catalonia of the documents confiscated because of the Spanish Civil War, all that has been put into effect so far has been the return of the documentation belonging to the Catalan Government.

While in the past the question had to be considered from a technical and professional point of view, moving away from political or demagogical stances, as the committee of experts did in their report in 2005, now the question needs to be considered from a predominantly legal point of view, that of compliance with Law 21/2005.

So what has been done to ensure compliance with Law 21/2005, of 17 November, since it came into force?

In 2006, a group of archivists contracted by the Government of Catalonia carried out the tasks involved in drawing up an inventory of the documents that were included in the scope of application of the Law. This task, which was completed in October last year, provides evidence that the General Civil War Archive in Salamanca contains some two million private documents confiscated in Catalonia from individuals or legal entities.

However, it is a Joint Committee of the Spanish and Catalan Governments, anticipated in Article 4 of the Law, that has to give the final approval of these inventories of the Catalan document fonds pending return. Until this committee meets, the documents cannot be removed from their current home and returned to their rightful owners.

And what has the Spanish Ministry of Culture done up to now? Well, it has delayed the process, shown a lack of will to bring the matter to a close and despite the fact that it

¹ "...this editorial may not be the last because the private documents of associations, trade unions, political parties and private individuals as well as those of Catalan councils and municipalities are still pending return."

has now had the inventories for 11 months, its response is that they are still being revised. One example of this apathy is the failure to deliver the 7 files belonging to the Government of Catalonia, which are still in Madrid, although the National High Court lifted the cautionary measure of suspending the return of the files of the Government of Catalonia of the Second Republic.

The appearance of the new Minister of Culture, César Antonio Molina, before the Culture Commission of the Congress of Deputies on 29th August this year also failed to shed any further light on the matter. During the session, despite insistent questioning from the Deputies of the Catalan parties, the Minister did not set a date for the meeting of the Joint Committee, in spite of his assurances that the process of returning the Catalan documents would be speeded up.

Moreover, his appointment to the position of Minister of Culture when this parliamentary term is about to come to an end has done little more than raise doubts concerning eventual compliance with the law. In the six months remaining before the elections, it is likely that the Minister will have time to do little more than get an idea of the situation, while the scarce room for manoeuvre in the run-up to elections does not invite optimism.

And in Catalonia, what have the Association of Archivists of Catalonia and other Catalan institutions and bodies done? The AAC has continued to provide its support for the initiatives of the Catalan Ministry of Culture and the Dignity Commission, defending the fact that the demand for the return of the Catalan documents is based on the internationally recognised principles of archiving and on current legislation concerning archives and documentary heritage.

The Catalan Ministry of Culture has prepared the conditions and clauses of the open tender for the digitisation of the documents, as well as the protocol of conditions of return to the almost 300 individuals and private entities identified, while the Dignity Commission has continued to follow developments closely, providing additional pressure with potential social mobilisation.

Consequently, the AAC would emphasise the need to set the Joint Committee established by the law to work and to implement the return of the private documentation. This has to take place urgently, given that the proximity of the general elections could cause changes to the anticipated agenda for its return.

The Spanish Ministry of Culture must call a meeting of the Joint Committee to approve the inventories, because before a single document leaves Salamanca, another process must take place - the digitisation of all of the Catalan documents and the deposit of a copy in the General Archive of Spain.

This must be done quickly if the timescale laid down in Law 21/2005 is to be met. Law 21/2005, like all laws, is compulsory for government agencies and citizens and in this day and age we cannot permit failure to comply with a law when the technical, economic and human means are there for its terms to be met.

Finally, this must be done urgently so that the documents and objects that were confiscated over 68 years ago can be returned to the individuals who are still alive and to their families. We feel that there cannot be a repeat of the case of poster artist Carles Fontseré, who witnessed the birth of the law but not the return of his papers.

All in all, we are facing a particularly complex situation due to the use that has been made of the case for political ends and we must demand that the Law is followed to the letter. This will serve to bring a chapter to a close that, beyond the technical sphere, has tinged the declarations of many politicians and the front pages of many newspapers with demagogy. We must use this situation to help us reflect on the extent of the complicated ethics surrounding the issue and on the absence of education that has affected it and that currently makes it seem that the question will drag on, unresolved, forever.