



INFORMATION NOTE No. 20/2015

THE TC IS AGAINST STOPPING A LEGISLATIVE INITIATIVE ONCE IT IS GRANTED LEAVE TO PROCEED AND OVERRULES A RESOLUTION ADOPTED BY THE BOARD OF THE CATALONIAN PARLIAMENT

Chamber One of the Spanish Constitutional Court (TC) has upheld the appeal for constitutional protection filed by a group of citizens against a resolution adopted by the Board of the Catalan Parliament which is annulled, on the grounds of infringing the right to participate in public matters, acknowledged by Art 23.1 of the Spanish Constitution (CE). The judgment, where Judge Juan Antonio Xiol acted as Reporting Judge, includes the particular vote of Judge Andrés Ollero.

The facts giving rise to this appeal are as follows: on 29 November 2011, after ascertaining compliance with all formal and material requirements, the Board of the Catalan Parliament granted leave to proceed to a popular initiative entitled “*Equal opportunities in Catalan education*”. Consequently, it began to gather signatures. On 13 March 2012 the Generalitat Government, which had not been previously consulted about the initiative, forwarded a resolution to Parliament, challenging its processing on the grounds that it would increase the expenses budgeted for the ongoing year. On 20 March 2012, before expiration of the signature gathering period, the Board rendered null and void the initiative’s leave to proceed and declared its processing as complete.

According to the Chamber, “*the decision to nullify the initiative’s prior leave to proceed*” has been based on an interpretation of applicable regulations, “*objectively preventing the possibility of meeting one of its inherent purposes, i.e. the chance for political representatives of all citizens to pronounce themselves on the content of the initiative, thereby affecting the core of Art. 23.1 CE*”.

The judgment specifies that, according to regulations governing a Popular Initiatives in Catalonia (LILPC), in force at the time the facts occurred, the causes for an inadmissible bill do not include “*the Government’s future challenge to its processing for budgetary reasons*”. Both this rule and the Catalan Parliament Regulations state that the Board is competent to check whether the initiative meets the necessary formal requirements and, as the case may be, determine whether or not to grant it leave to proceed.

Furthermore, the Regulations provide that if the Board considers that “*a bill may have budgetary effects, the Government’s prior conformity will be necessary for it to proceed*”. The Government may indicate its non-conformity “*up to two days before a discussion is held on the entire bill*”, but may not challenge the processing if the economic effects affect another budgetary year.

According to the Chamber, the aforementioned regulations evidence that the Board’s decision to nullify the leave to proceed “*lacks legal coverage, as it was adopted at an inappropriate time, based on a situation that is not legally foreseen as a cause to reject the processing of these types of bills, by the Parliamentary Board which is not competent to do so*”.

This lack of timeliness is determined by the fact that the Board has a fortnight, after the application to process the initiative is registered, to decide whether or not to process the same. *“Consequently, once this admissibility stage is completed, verifying compliance with the necessary requirements, a decision cannot be overruled that aimed at perfecting a bill derived from a popular initiative based on the gathering of signatures”*.

The argument used to overrule the leave to proceed (budgetary non-conformity of the Government) is not included amongst the inadmissibility causes foreseen in the LILPC. Moreover, the judgment adds that in this case the provision gathered in the Catalanian Parliament Regulations is *“inapplicable”* given that the initiative in question *“due to its specific characteristics, has been specifically and uniquely regulated by the legislator”* who, due to its link with citizens’ rights to participate in public matters (Art. 23.1 CE), *“has removed any possibility of this non-conformity becoming a hindrance for political representatives to pronounce themselves on matters involving an initiative backed up by a considerable number of citizens”*. The reformed regulations, covering these initiatives, adds the judgment, reinforces this by establishing, as the only effect of the Government’s budgetary non-conformity, that *“the law eventually passed [further to the popular initiative] cannot come into force, in relation to such budgetary matters, until the next budgetary year”*.

Consequently, concludes the Chamber, as the Government’s non-conformity is not *“expressly”* foreseen as a reason to dismiss this type of initiative, *“any interpretation in this sense will illegally restrict the essential content of Art. 23.1 CE”*. This decision has prevented *“the ordinary development of a signature gathering campaign, providing information on the reasons for the initiative and collecting the necessary citizen support to which the appellants were entitled (...), once the Board of Parliament had already allowed this stage to commence (...)”*.

In his particular vote, Judge Andrés Ollero does not consider that the right of political participation was infringed. The exceptional acknowledgement of a channel for direct democracy does not grant it any prevalence over ordinary representative channels. The regulation of legislative initiatives cannot question the Government’s responsibility to guarantee that any limits on public expense foreseen in the budgets are met. This explains why this participation is not included as a cause of dismissal, without preventing governmental intervention, which could even affect- during the parliamentary stage itself- amendments entailing a cost increase, even if this prevents future discussion on the matter; to claim that popular initiatives must be discussed in any case is something not backed up by the Constitution or the law.

Madrid, 2 March 2015.