



## INFORMATION NOTE No. 43/2015

### THE TC DECLARES THE UNCONSTITUTIONALITY OF CERTAIN STEPS TAKEN BY THE CATALONIAN GENERALITAT TO PREPARE THE “CITIZEN PARTICIPATION PROCESS” OF 9 NOVEMBER

The Plenary Meeting of the Constitutional Court (TC) has unanimously declared the unconstitutionality of certain steps taken by the Catalanian Generalitat to prepare the so-called “*citizen participation process*” of 9 November 2014. These steps, started up by the autonomous Government following the provisional suspension of a decree calling the popular consultation scheduled for that date are, according to the Court, “*totally unconstitutional, as they suffer defects of competence, given that the Autonomous Community is not entitled to call consultations on matters that affect the constituted order and grounds of the constitutional order*”. The Vice President, Adela Asúa, acted as Reporting Judge.

The Plenary Meeting points out that, unlike the appeal brought against the decree delivered by the Catalanian Generalitat to call the consultation (which was declared unconstitutional in Constitutional Court Judgment (STC) 32/2015, of 25 February), in this case “*there is no formal calling act*” but a series of “*material*” steps linked to the holding of the 9-N consultation. Consequently, what is being tried is this set of steps, “*understood as a whole, as an act attributable to the Government of the Catalanian Generalitat*”. The plaintiff is claiming that, through these steps, the Generalitat has surpassed the scope of its competence.

A limit on the Generalitat’s competence to call a popular consultation is established in Art. 122 of the Catalanian Statute of Autonomy: all consultations called by the Generalitat should be strictly limited to the scope of its competence. In other words, states the Plenary Meeting, “*an Autonomous Community cannot call or take steps, whether or not formalised by law, that promote the calling of a popular consultation (albeit not a referendum) that surpasses the scope of its competence, or which affects “fundamental issues resolved in the constituent process that are not part of the constituted powers’ decision-making”*. If a consultation affects these “*fundamental issues*”, the only possible channel is a reform of the Constitution in the constitutional terms foreseen.

The judgment then analyses the content of the two questions covered by the consultation. In this regard it states that “*there is no doubt*” that they both (“Do you want Catalonia to become a state?” and “Do you want this State to be independent?”) raise “*an issue that affect the constituted order and the very foundations of the constitutional order*”, affecting “*fundamental issues resolved in the constituent process that are not part of the constituted powers’ decision-making*”. The questions “*presume an indirect acknowledgement in favour of the people of Catalonia of certain attributions that are contrary*” to Articles 1.2 and 168 of the Constitution.

Furthermore, adds the judgment, the challenged steps are related to the decree to call the 9-N consultation, which was provisionally suspended and subsequently declared unconstitutional and void. “*Consequently (...) we should also conclude here that the questions covered by the so-called “citizen participation process” called for 9 November 2014 also exceed the scope of competence of the Catalanian Generalitat*”. “*This constitutional infraction unavoidably affects the overall steps taken by the Catalanian Generalitat to*

*prepare said consultation, or related thereto, insofar as the questions made in the consultation are inseparable from the other components included in the set of steps taken by the Generalitat that are now challenged*".

Consequently, the Court has declared that these steps taken by the Generalitat are fully unconstitutional "*given that the Autonomous Community is not entitled to call consultations on matters affecting the constituted order and the very foundations of the constitutional order*".

Madrid, 11 June 2015.