



INFORMATIVE NOTE No. 56/2016

THE TC DETERMINES THAT THE EARLY CALLING OF A MEETING OF PARLIAMENTARY SPOKESMEN INFRINGES THE RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS

The Plenary Meeting of the Constitutional Court (TC) has unanimously decided to partly hold the three appeals for constitutional protection brought by deputies of Ciudadanos (C's), Partido Socialista de Cataluña (PSC) and Partido Popular (PP) against various resolutions adopted by the Catalanian Parliament in relation to the processing of a "*Proposed resolution on the commencement of a political process in Catalonia as a result of the elections*" held on 27 September 2015. The Court has delivered three judgments- of which the reporting judges have been the President, Francisco Pérez de los Cobos, and the Judges Fernando Valdés Dal-Ré and Juan Antonio Xiol- declaring an infringement of the right to participate in public affairs (Art. 23.2 Spanish Constitution (CE)), repealing two of the parliamentary acts questioned by the plaintiffs.

The facts giving rise to the three appeals for constitutional protection are summarised below:

On 27 October 2015, the Panel of the Catalanian Parliament granted leave to proceed to said "*Proposed resolution (...)*". Against this decision, the C's and PSC groups submitted petitions for reconsideration, which were adhered to by the PP deputies, on the grounds that said initiative should not have been granted leave to proceed as it was openly contrary to the Constitution. On 2 November, the Presidency called a meeting for the next day, 3 November, of the Meeting of Spokesmen; this body, according to the Catalanian Parliament Regulations [Reglamento del Parlamento de Cataluña] (RPC) should have been heard before the Panel reached a decision on the petitions for reconsideration. On this date, the PP deputies had not yet established a parliamentary group or had designated a spokesman, for which they had time until 5 November. The Meeting of Spokesmen finally took place on 3 November and, that same day, the Panel of the Parliament dismissed the petitions for reconsideration and upheld its prior decision to grant leave to proceed to the "*Proposed resolution (...)*".

Let us recall that said "*Proposed resolution (...)*" of the Catalanian Parliament was declared null and void by the Plenary Meeting of the Court in Constitutional Court Judgment (STC) 258/2015, which upheld the challenge brought by the Spanish Government.

After analysing the facts, the Court first of all concluded that the resolution of 27 October whereby the Panel granted leave to proceed to the "*Proposed resolution (...)*" did not harm the right foreseen in Art. 23.2 CE. The plaintiffs claimed that it should have been dismissed as it was contrary to the Constitution "*in a blatant and evident manner*".

According to extensive constitutional case-law, the main task of these Panels is to "*control legal regularity and formal or procedural viability*" in the initiatives submitted. In

general, no proposals should be dismissed due to their alleged unconstitutionality, as this would consequently infringe the right of representation of the members of parliament issuing the initiative in question; only as an exception has the possibility been allowed of the Panels not proceeding with proposals that are clearly contrary to the Constitution.

In this case, even in an exceptional situation, the Panel's decision would not have infringed the right of Art. 23.2 CE because the right to participate in public affairs does not include "*a fundamental right to the constitutionality of any parliamentary initiatives*".

However, the right foreseen in Art. 23.2 CE was infringed due to a breach, by the Panel, of the procedure established in the Parliamentary Regulations for the resolution of petitions for reconsideration. According to internal rules of the Catalanian Parliament, the Meeting of Spokesmen should be heard before the Panel settles any petitions for reconsideration brought against its own decisions. This prior hearing, explains the Court, is a "*central*" component of the parliamentary reconsideration procedure and is connected to the core of the right protected by Art. 23.2 CE, i.e. the representatives' right to form a parliamentary group, to designate spokesmen and to participate "*in a collegiate body consisting of different political forces represented in Parliament*". In short, it is a procedure used to "*guarantee the pluralism inherent to Parliament*".

Consequently, the Panel may not reach a decision without previously hearing the Meeting of Spokesmen and, in this specific case, this prior and mandatory hearing was not held. The spokesmen, explains the Plenary Meeting, cannot be called to a Meeting "*unless they are all appointed by their respective groups (Art. 28.1 RPC), a designation process that will only culminate (...) whenever all the parliamentary groups have been established*". Consequently, those summoned on 3 November "*were not called in the regulatory form of a Meeting of Spokesmen (...)*". "*In short, the Meeting was not heard and the groups were unable to duly deploy the task assigned thereto, through their spokesmen, in the procedure*".

The resolution of the Panel that dismissed the petitions for reconsideration was adopted overlooking an "*essential step of the parliamentary guarantee procedure*" and infringed the constitutional right of the appellants (Art. 23.2 CE), which is why the Court decided to repeal the same.

Finally, the Plenary Meeting recalled that, according to reiterated case-law, any parliamentary acts that "*prevent, hinder or illegally disturb the regulatory exercise*" of the right of members of parliament to establish a group, will breach both the right of deputies and of the citizens they represent. In this case, the calling by the Parliament's President of a Meeting of Spokesmen for 3 November, when the PP deputies still had time to establish a parliamentary group and appoint a spokesman, was "*irregular and premature*", which is why the Plenary Meeting also declared it null and void.

Madrid, 7 June 2016.