



INFORMATIVE NOTE No. 71/2016

THE TC ANALYSES THE ACTIVITY OF THE STUDY COMMISSION FOR THE CONSTITUENT PROCESS, CREATED BY THE CATALONIAN PARLIAMENT, AND UNANIMOUSLY DEMANDS THAT IT UPHOLD THE SPANISH CONSTITUTION

The Plenary Meeting of the Constitutional Court (TC) has unanimously upheld the judgment enforcement incident raised by the Government in relation to Constitutional Court Judgment (STC) 259/2015, of 2 December, declaring the unconstitutionality and nullity of the resolution passed by the Catalanian Parliament, which initiated the so-called “*severance process*” from Spain (Resolution 1/XI of the Catalanian Parliament, of 9 November 2015, on the commencement of a political process in Catalonia as a result of the elections of 27 October 2015). The Court considers that there is a material coincidence between the scope of activity of the now challenged creation of a Study Commission for the Constituent Process of the Catalanian Parliament and the purposes pursued by Resolution 1/XI, repealed last December; consequently, it has advised the autonomous Parliament, “*to particularly include the Parliament Board*”, that the Study Commission’s activity should “*fulfil the requirements foreseen in the Constitution and, specifically, the procedures established for its reform*” and cannot be addressed to the “*opening of a constituent process in Catalonia aimed at creating a future Catalanian constitution and an independent Catalanian state*”.

The judgment enforcement incident is specifically brought against Resolution 5/XI of the Catalanian Parliament, of 20 January 2016, creating parliamentary commissions, insofar as it creates a Study Commission for the Constituent Process which, according to the State Attorney, “*would amount to an attempt by the Catalanian Parliament to elude the pronouncements contained in STC 259/2015, as it intends to move forward with a “constituent process in Catalonia”*”. Thus, the plaintiff has requested the nullity of Resolution 5/XI, a petition also endorsed by the General Prosecution Office of the State.

First of all, the Court points out that, as “*the citizens’ representative*” and pursuant to its Regulations, the Catalanian Parliament “*may create (...) any study commissions it deems appropriate to “analyse any matter affecting Catalanian society”*”.

However this right, it recalls, “*is not absolute or unlimited*”. The Catalanian Parliament may promote a “*hypothetical reform of the Constitution*” and thus previously establish “*a Study Commission on this future reform of the legal framework in force*”. However, an application for a constitutional reform “*is possible within Spanish law as long as it is not prepared or upheld through activity in breach of democratic principles, fundamental rights or other constitutional mandates, and its effective completion follows the framework established for constitutional reform proceedings*”.

Pursuant to the Constitution, all Autonomous Community Assemblies enjoy “*the broadest freedom for the public exposure and defence of any ideological conceptions*”; “*these are privileged scenarios of public debate*”. “*In fact, parliamentary Assemblies are the ones*

which, “*as constituted powers*”- without prejudice to what the Constitutional Court may subsequently say if so requested-, are obliged to “*ensure that their decisions at all times adjust to the Constitution and the law*”. The holders of public office are not required to “*ideologically adhere*” to the Constitution, but “*must undertake a commitment to carry out their duties in accordance with the same*”.

This said, the Court has explained the arguments on which it has upheld the judgment enforcement incident. It states that “*the matters entrusted to this parliamentary commission through Resolution 5/XI (...) substantially coincide with the purposes sought by Resolution 1/XI, declared unconstitutional and null and void by STC 259/2015*”. In addition to this similarity, there is also a “*succession of parliamentary events*”; the approval, on 9 November 2015, of Resolution 1/XI, requesting “*the passing of a law for the constituent process or the adoption of the necessary measures to begin a severance process from the Spanish State*”; and two and a half months later, on 20 January 2016, the creation of a Study Commission for the Constituent Process.

The “*intensity*” of this relationship suggests that “*the creation of the Commission could be understood as an attempt to give apparent validity to the so-called constituent process in Catalonia, which was declared unconstitutional by STC 259/2015*”, which is sufficient reason to uphold the enforcement incident.

However, “*respect for parliamentary autonomy*” makes it necessary to admit that “*parliamentary activity within a commission may be aimed at analysing the various alternatives possible, further to the Constitution, to reform the same in order to cover any political plan*”. This is why the decision has set a limit that the Study Commission’s activity may not exceed: “*What is not constitutionally admissible is for parliamentary activity to “analyse” or “study” to be addressed at continuing with and supporting the objective proclaimed in Resolution 1/XI- the initiation of a constituent process in Catalonia directed at creating a future Catalanian constitution and an independent Catalanian state in the form of a republic-, which was declared unconstitutional in STC 259/2015*”.

In short, the activity of the Commission created is “*totally unfeasible if it is not conditioned to fulfilling constitutional requirements, to specifically include constitutional reform proceedings (...)*”; the creation of this Commission may not “*be used, lest it trigger the consequences foreseen by law, as an attempt to avoid or elude the fact that all public powers are bound to fulfil Constitutional Court resolutions*”. The Court, furthermore, has advised that “*the powers involved and their holders, at their own risk, of their duty to prevent or stop any initiative that may overlook or elude these mandates*”.

Finally, the decision declares that the Court has been acting “*with utmost respect for parliamentary autonomy*” and with the “*caution required by the circumstances, without overlooking the firmness and determination inherent to the relevance and seriousness of its purpose*”. Furthermore, it points out that “*it has examined the conclusions approved by the parliamentary Study Commission and has ascertained that they clearly breach the mandates referred to*”. This is why it has again advised that “*it is the autonomous Parliament itself which must ensure that its activity falls within the scope of the Constitution and that all public powers are bound to fulfil what the Constitutional Court decides*”.

Madrid, 19 July 2016