



CONSTITUTIONAL COURT OF SPAIN
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THE CONSTITUTIONAL COURT WHOLLY DISMISSES, VIA A UNANIMOUS DECISION, THE RECUSAL LODGED BY THE PRESIDENT OF THE CATALONIAN PARLIAMENT AGAINST THE TWELVE MAGISTRATE JUDGES

The Plenary Session of the Constitutional Court has unanimously decided to dismiss the recusal lodged by the President of the Catalan Parliament, Carme Forcadell, against the twelve magistrate judges who make up the Court. The Court indicates that it is a recusal *“lodged generically”* and that, whilst it refers to the collective body of magistrate judges, in reality, *“it is aimed at the body itself, rather than its members”*. For these reasons, along with the *“specific nature of the Constitutional Court”*, the only body of its kind, which does not form a part of the Judiciary and is made up of only twelve magistrate judges, without any possibility of internal substitution, the recusal action is to be wholly dismissed.

In the recusal document, the President of the Catalan Parliament alleges that the magistrate judges have incurred the grounds for recusal envisaged in article 219.11 of the Organic Law on the Judiciary (LOPJ) as they *“have participated in the examination of criminal proceedings or have resolved the lawsuit or proceedings in a prior instance”*. In her opinion, subsequent to the amendment of article 92 of the Organic Law on the Constitutional Court (LOTC), the eventual application of the measures it contains would give rise to two distinct procedural phases: a declaratory phase, wherein only the administration requesting application of the measures and the State Prosecutor's Office are parties; and an enforcement phase, wherein the measures levelled against public employees and posts are adopted.

The Court responds to the questions raised and indicates that, in accordance with constitutional doctrine, the processing of a recusal may be denied both in view of its defective procedural approach and in view of its arguments. This occurs in cases wherein the recusal is aimed at the collective body of magistrate judges, which on previous occasions the Court has classified as *“impertinent and abusive”*. In such recusals, the ruling points out, *“two unique aspects arise”*. The first *“derives from the specific nature of the Constitutional Court, the only body of its kind, which does not form a part of the Judiciary and is made up of only twelve magistrate judges, without any possibility of internal substitution, competence with regards to the recusal of magistrate judges falling to its Plenary”*.

The second derives from the nature of the recusal itself, *“wherein, in truth, the magistrate judges are not recused, but rather the Constitutional Court itself”*. Such a recusal, *“lacks legal substantivity and is not worthy of a pronouncement on a question of law”*.

Madrid, 07 September 2017