CONSTITUTIONAL COURT JUDGMENT

The Constitutional Court, in full bench, composed of the Judges Mr. Juan Jose Gonzalez Rivas (President), Ms. Encarnación Roca Trías, Mr. Andrés Ollero Tassara, Mr. Fernando Valdés Dal-Ré, Mr. Santiago Martínez-Vares García, Mr. Juan Antonio Xiol Ríos, Mr. Pedro José González-Trevijano Sánchez, Mr Antonio Narváez Rodríguez, Mr. Alfredo Montoya Melgar, Mr. Ricardo Enríquez Sancho, Mr. Candido Conde-Pumpido Touron and Ms Maria Luisa Balaguer Callejon, has pronounced

IN THE NAME OF THE KING

the following

J U D G M E N T

In the action of unconstitutionality number 4386-2017, lodged by the State Attorney on behalf of the President of the Government against the Law of the Catalonian Parliament 20/2017, of 8 September, so-called “of Juridical Transition and founding of the Republic”. The Congress of Deputies, the Senate and the Catalonian Parliament have been party, but no pleadings have been submitted. The judgment has been drawn up by Judge Mr. Ricardo Enríquez Sancho, who expresses the opinion of the Court.

II. GROUNDS

1. The President of Government, through this action of unconstitutionality, challenges the Catalonian Parliament Law 20/2017, of 8 September, so-called "of Juridical Transition and founding of the Republic". The appeal is lodged against the Law in its entirety, becoming unconstitutional both regarding substantial and procedural considerations.

For the appeal, the law subject to appeal is affected by an *in toto* unconstitutionality since it breaks the current constitutional order, incurring in a serious and obvious violation of fundamental constitutional principles and provisions. The decisions which become the maximum exponent of content and purpose of the Law are, according to the State Attorney, those referred to the constitution of Catalonia as a Republic (art. 1), to the assignment of sovereignty lying with the people of Catalonia (art. 2) and to the condition of the Law itself as a supreme law of the Catalan legal system (art. 3). Those provisions and, by association, all the remaining provisions breach, from a material point of view, Articles 1.2 and 3, 2 and 9.1 CE [Spanish Constitution, hereinafter by its Spanish acronym "CE"], which respectively refer to the national sovereignty vested in the Spanish people; to the parliamentary monarchy as a political form of the Spanish State; to the indissoluble unity of the Spanish Nation, proclaimed together with the recognition and guarantee of the right to self-govern of nationalities and regions of which it is composed and, finally, to the subjection of citizens and public powers to the Constitution and all the remaining legal system. Article 1 of the Statute of Autonomy of Catalonia (hereinafter, SAC) has also been mentioned as breached, setting that "Catalonia, as a nationality, exercises its self-government constituted as a self-governing community in accordance with the Constitution and this Statute, which is its basic institutional rule". The grounds for unconstitutionality of procedural nature relates to what the appeal describes as a "simulacrum" of the legislative procedure followed by the processing and approval of the challenged Law, where rights of parliamentary minorities would have been disregarded.

These reproaches of unconstitutionality allocated to the challenged Law, which, after being duly summoned by this Court, have neither been challenged by the Catalan Parliament nor by the Government of the *Generalitat*, shall be examined in the present Judgment. However, it deems necessary to make some previous reference to most prominent contents of said Law, for the sake of a better understanding of the subject-matter of this case.

2. As its name reveals and is expressly noted in the preamble, both the object and first objective of the challenged law were, "once the independence of Catalonia has been proclaimed", until the final configuration of the new Constitution is approved, "the basic constituent elements of the new State (*sic*) must be legally validated in a transitional manner, so that it may start to operate immediately and with the maximum effectiveness and, at the same time, […] the transition from the existing legal framework to the one to be drawn up by the Republic shall be regulated to guarantee that no legal vacuums shall exist, that the transition is carried out in an ordered and gradual manner and with the maximum legal certainty; thereby ensuring that the new State shall be subject to the rule of law from its very inception; that it shall at all times be subject to the rule of law. "

Title I, with the heading "General provisions, territory and nationality", includes those provisions of the challenged Law which may be considered essential, as already mentioned, declaring that "Catalonia is constituted as a democratic and social Republic of Law" (art. 1), it is proclaimed that "Catalan sovereignty lies with the people of Catalonia, and in Aran with the Aranese people, from which all powers of the State emanate" (art. 2) and provides that "This Law shall be the supreme law of the Catalan legal system until the constitution of the Republic is approved" (art. 3). Some provisions are also included in this Title concerning the European Union law and International Law (art. 4), the Arán's statute (art. 5), the territory (art 6) and the Catalan nationality (arts. 7 to 9 and final provision two).

Title II regulates the succession of Regulations and Administrations, becoming part of its content the incorporation within the Catalan administration of personnel from other public administrations (arts. 10 to 21). Title III concerns rights and duties (arts. 22 to 28). Title IV focuses on the institutional system, including the Parliament, the President of the *Generalitat*, which is the head of the State, the Government and Administration, the Catalan Electoral Commission and other institutions (Democratic Guarantee Council and Catalan Ombudsman) and, lastly, Local Government (arts. 29 to 64). Title V deals with the Judiciary and the Administration of Justice, where, among others contents, regulates the Catalan Prosecution Service, the appointment, organization and functions of the Supreme Court, the vacancies for the posts of judges, magistrates, prosecutors and lawyers of the administration of justice, the government of the Judiciary and the Joint Committee of the Governing Council of the Supreme Court and the Government of Catalonia (arts. 65 to 79). Title VI, headed as

"Finance", regulates, among others, the tax authority; the Kingdom of Spain succession in respect of economic and financial rights and duties; the budget and the customs authority (arts. 80 to 84). And the last title of the Law, Title VII, regulates the "constituent process", whose aim, all along the different phases of the process under this Title, is drawing up and approving the Constitution of the Republic (arts. 87 to 89). For its part, the First final provision sets up the requirements to reform the challenged Law itself which, according to its Third final provision, "will come into force once it has been approved by the Parliament of Catalonia, has been officially published, and the circumstances established in Article 4.4 of the Law on the Self-Determination Referendum of Catalonia have been complied with."

Thus, Articles 1, 2 and 3 are core principles of the challenged Law, the necessary support for the object and purpose concerned, enjoying the remaining provisions an instrumental character with regard to them. In the event that those provisions would become unconstitutional, as claimed by the appeal, the remaining provisions of law should run the same fate by way of association or consequence (art. 39.1 LOTC) [Organic Law 2/1979 on the Constitutional Court, hereinafter "LOTC" by its Spanish acronym].

3. Prior to ruling on those specific violations appealed in the claim, some preliminary statements should be made about the condition or nature of this law and its validity.

A) The challenged law intends to supersede, avoiding all the procedural steps of reform expressly laid down in the legal system, the constitutional and statutory order in force in Catalonia by a transitional regulatory system which constitutes its own content, until its final replacement, following the regulated constitutional process, by a future Constitution of the Republic of Catalonia. It is beyond all doubt that such pretension encourages and gives meaning to the overall of the statutory text that has to be ruled by this Court. It is therefore a claim of total and absolute breach of part of the territory of the State with the established constitutional order, in such a way that the challenged law neither seeks nor wishes to be based on the Constitution or on the SAC, to which it is nevertheless linked, thus placing itself in a resolute position of disregard for the constitutional order in force.

The law is framed within the so-called constitutional process aimed at the creation of a Catalan independent State in the form of a Republic, triggered by the Resolution of the Parliament of Catalonia 1/XI, of 9 November 2015, which in subsequent phases has led to a number of unconstitutionality and nullity judgements issued by this Court (from CC judgement no. 259/2015, of 2 December, to the fresh CC judgement no. 114/2017, of 17 October). In this occasion, the regional legislature intends to complete that secessionist unconstitutional process by passing a rule that, as its heading reveals, reports itself as the foundation of the Republic of Catalonia, based on an alleged sovereignty of Catalan people, and which regulates in a temporary manner its basic elements, until its final formation by a constitution which should be drawn up by a constituent assembly and be ratified by the Catalan people.

a) The "resolute position of disregard for the constitutional order" (CC judgment no. 259/2015, LG 3) of this Law is reflected in its anomalous enactment formula, as we have also held regarding the Law of the Parliament of Catalonia no. 19/2017, of 6 September, so-called "on the self-determination referendum".

In effect, as it was the case with the former law, the Law currently challenged has neither been enacted by the President of the *Generalitat*, "in the name of the King" (Article 65 SAC) and the condition of the former as "the ordinary representative of the State in Catalonia" (Article 67.6.a). This would have made "visible the link by means of which the institutional organization of the Self-governing Communities are linked to the State, of which the King is the symbol of its unity and permanence pursuant to Article 56" (CCJ 5/1987, of 27 January, LG 5). "An unusual statement has been adopted" with the only precedent of the mentioned Law 19/2017, "by which it simply gives visibility to the approval of the Law by the Parliament of Catalonia and, after its completion, it is ordered (with the usual formula used) "that all citizens subject to this Law shall cooperate to ensure its compliance, and that it shall be enforced by tribunals and authorities to whom it may correspond." [CCJ 114/2017, LG 2 A) a)].

b) The supremacy that the challenged Law advocates for itself would affect, as has also been stated following the identical pretence of the Law of the Parliament of Catalonia

no. 19/2017, both the Constitution and the SAC, without this conclusion be masked by the references made by the Law itself to a number of rules of the legal system in force (arts. 10 and 13), since, once that unconditional prevalence is stated, only the Law in itself would make applicable those provisions referred to [CCJ 114/2017, LG 2 A) a)].

The Law now under consideration attempts to be the foundational rule, on a transitional basis, of a legal system absolutely different from the current system relying on the Spanish Constitution and the SAC, and also, separated and independent from that one in force in Spain, by introducing an giving rise to an unequivocal continuum. This claim entails two relevant consequences, already mentioned in the CCJ 1142017, which should now be recalled.

Firstly, this "Law does not claim for itself a presumption of constitutionality which generally accompanies any democratic legislative task (for all of them, CCJ 34/2013, of 14 February, LG 9)", since the autonomous Parliament seeks to act, by issuing it, "not as a body established by the SAC, a rule whose legal nature relies on the Constitution", but as the representative of the people of Catalonia, on whom sovereignty relies (Articles 2 and 29.1). Secondly, our ruling shall confine itself to assess the legal validity or invalidity concerning the pretence to create, in the challenged Law and based on it, a legal system disregarding the overall legal order in force, in such a way that had those claims be declared contrary to the Constitution, it would make no sense to examine whether current or future legal contents would adapt or not to the fundamental rule. Thus, nothing should be said regarding whether the constitution of Catalonia in the form of a Republic contradicts or not Article 1.3 CE, which states that "the political form of the Spanish State is the Parliamentary Monarchy [LG 2 A) a)].

B) The challenged Law sets forth that it shall come into force, "once it has been approved by the Parliament of Catalonia, has been officially published, and the circumstances established in Article 4.4 of the Law on the Self-Determination Referendum of Catalonia have been complied with" (Third Final Provision). On its part, this last provision provides that, once the mentioned referendum has been held, "if the counting of votes validly made gives a result of more affirmative than negative votes, it shall mean the independence of Catalonia. To this end, the Parliament of Catalonia shall, within two days of the proclamation of the results by the Electoral Commission, hold an ordinary session to issue the formal

declaration of independence of Catalonia, specify its effects and commence the constituent process".

The fact of staying the execution of the challenged Law, even though it had not yet come into force, has been agreed, in compliance with Articles 161.2 CE and 30 LOTC, by a court decision [*providencia*] of 12 September 2017 (factual background 3 of the present Judgment), declaring the admissibility of the present action of unconstitutionality, and being still suspended at the time of adjucating it. In any case, the last condition imposed by its final provision three before coming into force – namely, complying with the circumstances set forth in Article 4.4 of the Law on the Self-Determination Referendum – cannot be verified given that "such referendum cannot be understood as been held under the rule of law" [CCJ 114/2017, LG 2 B)], since first, the Law 19/2017 issued by the Parliament of Catalonia was suspended by a court decision of 7 September 2017, along with other acts and regulations adopted by enforcing the mentioned Law and, afterwards, the action of unconstitutionality and the nullity of its full content stated by the CCJ 114/2017.

Nevertheless, such circumstance should not be obstacle for the present prosecution of the Law under consideration, given that the LOTC does not establish as a previous requirement for pursuing an action of unconstitutionality the entry into force of the challenged Law, nor does it set at that moment the *dies a quo* concerning the 3-months deadline to lodge it, whose time begins to run from the official publication of the Law (arts. 31 and 33), apart from being an expiration date, which does not admit the stay of proceedings (CCJ 11/1981, of 8 April, LG 2; CC *auto* 547/1989, of 15 November, LG 2). While remaining feasible, as it is in our legal system, the promotion of unconstitutionality appeals against legally binding rules which have not yet come into force after being published, it is also possible to be constitutionally prosecuted, even if this circumstance has not yet been verified at the moment of carrying it out. In other words, it is not therefore required that the challenged rule has come into force in order to be prosecuted.

To the foregoing it should be added that this does not mean that a rule lacks enforceability until its entry into force, given that, according to this Court, "its own existence entails its inclusion into the legal system, which means that, although its regulation cannot be applied to all the addresees, nor its provisions can obviously be enforced, the corresponding

public powers must adopt all necessary measures to become fully effective upon its entry into force". Besides, "it should be mentioned [...] that the rule, once it has been published but has not yet come into force, is already an integral part of the legal system, so it can be taken into consideration by the responsible for implementing the law, and even some indirect legal effects may be inferred from it" (CC *auto* 131/2017, of 3 October, LG 1).

4. The challenged law, as stated in the claim, is established as the fundamental mechanism to create a Catalan Republic and open the announced constituent process, establishing meanwhile its transitory legal regime. The content of Articles 1 and 2 means a fragrant violation of articles 1.2 and 2 CE, because the constitution of Catalonia as a republic and the attribution of sovereignty to the Catalan people are obviously damaging for the provisions vesting national sovereignty in the Spanish people (art. 1.2 CE) and claiming the "indissoluble unity of the Spanish nation" (art. 2 CE), unity that is considered essential in the current constitutional system by the supreme rule. The proclamation of the challenged law as the "supreme law of the Catalan legal system" -around which the remaining articles revolve regarding the succession of the constitutional legal system by the established transitory legal regime- is radically unconstitutional, by breaching Article 9.1 CE, and confirms the full unconstitutionality of its content, inasmuch as it is placed *ab origine* outside the constitutional legality. And finally, Articles 1, 2 and 3 already mentioned, and in connection, also the remaining provisions, violate the principle of the prevalence of the SAC (art. 1).

5. The challenged law, by means of the same reasoning used in the CCJ 114/2017 (LG 5) with regard to those constitutional infringements substantially identical attributed to the law of the Catalan parliament 19/2017, is clearly unconstitutional and it is on the whole by explicitly opposing those essential principles of our constitutional system: national sovereignty is vested in the Spanish people, the unity itself of the nation established as a social and democratic State, and the supremacy of the Constitution, to which all public authorities are bound, and hence, the Parliament of Catalonia as well (arts. 1.2, 2 and 9.1 CE).

a) The law contradicts, firstly, the supremacy of the Constitution (art. 9.1 CE), given that "not any established power should seek to surpass the fundamental rule, as stated by the Parliament of Catalonia on its own volition in an "open and explicit challenge to the binding force of the Constitution and the legal system grounded upon it (CCJ 128/2016, of 7 July, LG

5»" [STC 114/2017, LG 5 A)]. It so happens when the law advocates its condition of "supreme law of the Catalan legal system" (art. 3), legal system that, as stated, attempts to forge the current constitutional and statutory order. Consequently, that statement enables the Law to decide at its own discretion whether domestic rules -including the Constitution and the SAC-, autonomous and regional rules in force at the moment of its coming into force are applied, depending on whether or not they oppose its diktats, even going so far to reduce to an ordinary law those articles of organic laws, the SAC and the Constitution which have not been incorporated to its content, provided that they do not contravene the Law (arts. 10 and 13).

It is clear that the autonomous legislative, by ascribing the condition of "supreme rule" [to the challenged Law] by placing it above the Constitution, has forgotten "the permanent difference between the objectivity of the constituent power formalized in the Constitution and the action taken by established powers, which could never surpass the limits and powers set forth by the former" [CCJ 114/2017, LG 5 A) and case law cited]. Likewise, once the binding force of the Constitution has been disregarded, the conformity with the SAC has also been ignored (art. 147.1 CE), which results from the former and constitutes the immediate foundation of the powers conferred to the Parliament that this Law has adopted. The self-government of Catalonia, formed as a Self-governing Community, needs to be carried out "in accordance with the Constitution and with this Statute, which is its basic institutional rule" (art. 1 SAC), and the powers of the *Generalitat*, of which the Parliament is an integral part, "emanate from the people of Catalonia", and should accordingly be exercised, "in accordance with this Statute and with the Constitution" (arts. 2.1 and 4 SAC) [*ibídem*].

b) Article 2 of the challenged Law, on which its pretended supremacy relies, provides, by openly contradicting article 1.2 CE, that "Catalan sovereignty lies with the people of Catalonia, and in Aran with the Aranese people, from which all powers of the State emanate."

As stated by this Court, and we must once again insist in light of some approaches setting out the condition of sovereignty of nationalities or regions constituted into Self-governing Autonomies becoming an integral part of the State (art. 2), "the Constitution itself is the result of its creation as a sovereign nation by way of a single entity, the Spanish people, whom national sovereignty belongs to and from whom all State powers thus emanate (art. 1.2 CE)", this conceived of as "the entire array of institutions and bodies that exercise public powers throughout the entire territory of Spain, therefore including Self- governing

Communities as well [CCJ 259/2015, LG 4 a) and cited case-law]. Article 1.2 CE, a provision which means the "foundation of our entire legal system" (CCJ 6/1981, of 16 March, LG 3), assigns, as a result and exclusively, the entitlement of national sovereignty to Spanish people, a perfect unity for assigning the constituent power and, as such, foundation of the constitution and the legal system and origin of any political power (CC judgments 12/2008, of 29 January, LG 4; 13/2009, of 29 January, LG 16). If according to the current constitutional system only Spanish people are sovereign in an indissoluble and exclusive manner, not any other subject or body of the State or any part of those people might pretend, by declaring itself as sovereign, to provide or violate national sovereignty. Any action from that body or from people or from the citizens which form part of a Self-governing Community claiming for its provision or violation can only involve "a simultaneous rejection of national sovereignty which, according to the Constitution, is vested in the Spanish people as a whole" [CC judgments 42/2004, of 25 March, LG 3; 259/2015, LG 4 a); 90/2017, of 5 July, LG 6 a)].

The people of Catalonia, as already stated, and also Aranese people, "are neither entitled to a sovereign power, exclusive of the [Spanish] nation established as a State" (CCJ 42/2014, LG 3), nor are they "a legal entity entitled to compete with the owner of the national sovereignty" (CCJ 259/2015, LG 3), and finally, nor Catalan citizens could be confused with the sovereign people conceived as "the perfect unity for assigning constituent power and, as such, foundation of the Constitution and the legal system" [CC judgments 12/2008, LG 10; 259/2015, LG 3; 90/2017, LG 6 a); 114/2017, LG 5 B)].

c) The construction of Catalonia as an independent State (art. 1) is contrary to the unity of the Spanish nation on which the Constitution is founded (art. 2 CE).

The national sovereignty vested in the Spanish people "necessarily entails its unity", as set up by article 2 CE, and such unity from the sovereign entity "is the basis of a Constitution whereby the nation itself is constituted, at the same time, in a social and democratic State subject to the rule of law (art. 1.1 CE)". It is also a State "unique or common to everyone throughout the national territory, notwithstanding that it is also a complex, compound unit caused by the territorial autonomy [...] on the different nationalities and regions that, in the form of Self-governing Communities governed by their respective Statutes of Autonomy, merge into Spain" [CCJ 259/2015, LG 4 a); doctrine echoed by the CCJ 90/2017, LG 6 a)].

The assignment of national sovereignty to the Spanish people (art. 1.2 CE) and the indissoluble unity of the nation (art. 2 CE) are therefore contemplated together with the recognition and guarantee of the right to autonomy of the nationalities and regions (art. 2 CE). This right to autonomy is not and cannot be confused with sovereignty (CC judgments 4/1981, of 2 February, LG 3; 25/1981, of 14 July, LG 3), which is not contemplated in our Constitution for those nationalities and regions which are an integral part of the State. In this sense, this Court has declared that, from the legal point of view, Article 1 SAC outlines the actual position of Catalonia within the current constitutional framework as a "nationality, exercising its self-government constituted in a Self-governing Community according to the Constitution and the present Statute, which is its basic institutional rule". That statement transcribed from the statutory provision, claims for Catalonia, "in perfect constitutional terms [...] all the elements that characterize it as an integral part of the State founded in the Constitution. A nationality established as a Self-governing Community, whose basic institutional rule is its own Statute of Autonomy". So that the Self-governing Community of Catalonia "gave rise under the rule of law to the Spanish Constitution and, with it, to the national sovereignty proclaimed by Article 1.2 CE, and by enforcing it the Spanish people, as owner of such sovereignty, have been granted a Constitution which holds and wants to be based on the unity of the Spanish nation". The Constitution is therefore not presented as "the result of an agreement among historical territorial instances preserving some previous rights", bus as a "rule emanating from the constituent power imposed with general binding force within its scope, without leaving outside it some previous historical situations" [CCJ 90/2017, LG 6 a) and cited case-law].

As abundantly and convincingly reasoned and stated in the CCJ 114/2017 [LG 2 A) b)], none of "Spanish people" (CE preamble) have a "right to self-government", understood "as a "right" to promote and accomplish its unilateral seccesion from the State in which Spain is constituted (art. 1.1 CE)". "Such "right", is obviously not recognized by the Constitution, nor can it be adduced [...] to form part of our legal system via international treaties of which Spain is part (art. 96 CE)", neither is it based on international right. And, finally, as this Court has stated in the said judgment, "the respect to "national unity", to their "basic political and constitutional structures," and to the "territorial integrity" of Member States are principles expressly proclaimed, with the highest rank, by European law (Article 4.2 of the Treaty on European Union)."

d) At this point, it should once again be recalled that all the provisions in the Constitution are likely to be reconsidered and reviewed under the law, given that our Constitution, "as the highest law, does not pretend to itself the condition of *lex perpetua*", since it admits and regulates its total revision (art. 168 CE and CCJ 48/2003, of 12 March, LG 7). Hence, the approach of views which seek to amend the constitutional order, even reconsidering the identity and unity of the owner of sovereignty, is certainly feasible in our legal system "given that, within the framework of proceedings for amending the Constitution [...] not any material limits exist to the constitutional revision "[CCJ 103/2008, of 11 September, LG 4; doctrine echoed by CCJ 90/2017, LG 6 b)]. Therefore, "the openness for the formal amendment of the fundamental rule is complete, which, among others, may be requested or proposed by the Assemblies of Self-governing Communities (arts. 87.2 and 166 CE)" [CCJ 114/2017, LG 5 C)].

To this extent, the assertion that Constitution is a framework for agreements, broad enough to include very different political choices, is correct. In effect, the Constitution provides the widest freedom for public and defense exposure, within the institutions and outside them, of any ideological conception, including those that "seek for a certain group to be recognized as a national community, even as a principle for attempting to form a constitutionally legitimized will, through the corresponding, unavoidable reform of the Constitution, to translate this notion into a legal reality" (CCJ 31/2010, of 28 June, LG 12; 259/2015, LG 7). However, converting these projects into rules or other expressions of the public authority is only possible through the procedure for constitutional reform, whose accomplishment "results, in every single case, unforgivable" (CCJ 103/2008, LG 4). Thus, when a public power pretends to alter the order unilaterally established and ignores the procedures of reform expressly set forth by the Constitution "it means to abandon the only path that leads to this outcome, namely, the path of the law", resulting in "irreparable damage to citizens' freedoms" [CCJ 259/2015, LG 7, well-established case-law, among others, by CC judgments 90/2017, LG 6 b) and 114/2017, LG 5 C)]. The latter has precisely been accomplished by the Parliament of Catalonia by passing the challenged Law.

e) The well-known infringement of Articles 1.2 and 2 CE is inseparably linked to that of constitutional principles which shapes our "democratic" State "under the rule of law" (art. 1.1 CE).

The Parliament of Catalonia, by passing the challenged Law, has risen against the national sovereignty vested in the Spanish people (art. 1.2 CE), has broken the unity of the Nation (art. 2 CE) and has abandoned "the current institutional position, according to the legal system in force, of the Self-governing Community [CCJ 52/2017, LJ 8 A)], with the subsequent violation, as it has been stated in CCJ 114/2017 on the occasion of adjucating the Law of the same Parliament 19/2017, "of the constitutional principle to the self-government (art. 2 CE) and the basic resolutions of the same Statute of Catalonia (arts. 1 and 2 SAC), thus undermining its immediate source of authority" [LG 5 D)].

As already stated in the said Judgment, and it should now be pointed out, the Chamber, by passing the Law now under consideration, with and absolute disregard for constitutional loyalty, "has provoked [...] an attack to the accounting of the Spanish State –to which the Self-Governing Community of Catalonia belongs- as a democratic State under the rule of law, based on the constitutional principles stated in Article 1.1 CE and which at the same time are common values of the European Union member states and on which it is founded (Article 2 of the Treaty on European Union)". It has also attempted to "cancel *de facto* in the territory of the Self-governing Community and for Catalan people as a whole the validity of the Constitution, the Statute of Autonomy and of any rule of law failing to comply or adapt to its invalid will". By acting in this way, the Chamber "has put itself completely outside the rule of law", has failed "to act in the performance of its own constitutional and statutory duties and has put at maximum risk the validity and effectiveness of any guarantees and rights granted for all Catalan citizens by both the Constitution as the Statute itself". Finally, such a serious attack to the rule of law, has violated "with similar intensity, the democratic principle, since the Parliament has ignored that everyone'subordination to the Constitution is another form of submission to the people's will, this time expressed as a constituent power vested in the Spanish people, not in any single piece of it", and that in the constitutional State "the principle of democracy" cannot be detached "from the unconditional supremacy of the Constitution [CCJ 259/2015, LG 4 b)]" [CCJ 114/2017, LG 5 D)].

Consequently, in view of the grounds of substantive law stated therein, the challenged Law shall be declared null and unconstitutional.

6. In the appeal, the alleged ground for unconstitutionality of formal character is based on the failure to comply with the legislative procedure followed when the challenged Law was being processed and approved. A processing carried out via Article 81.3 of the Rules of Procedure of the Parliament of Catalonia (hereinafter, RPC), in just an 11-hour session, where overall amendments on the bill were not admitted, where only two hours to submit partial amendments were granted, and where the request for an opinion from the Council for Statutory Guarantees was also disregarded, among other violations of the rights of minorities.

This Court has ruled on a similar reproach of unconstitutionality in the CCJ 114/2017 regarding the processing of Law 19/2017 by the Parliament of Catalonia, whose doctrine therefore has to be considered when assessing the procedural defect now reported, but not without first clarifying two more points. Firstly, relating our task to exclusively determine whether some procedural defects have occurred during the parliamentary processing of the Law, regardless therefore of what has already been proved concerning the accomplishment by the Parliament of Catalonia of former decisions delivered by this Court on the admission and subsequent processing of the bill which gave rise to the Law now under consideration (CC *auto* 124/2017, of 19 September). Secondly, it must be pointed out that, by adjourning this ground for unconstitutionality, we shall be able to take as reference any constitutional rule, regardless of whether it was invoked during the proceedings (art. 39.2 LOTC).

a) It is worth recalling, even briefly, the most relevant parliamentary actions developed within the Chamber concerning the bill "of Juridical Transition and founding of the Republic", already stated in the CC *auto* 124/2017, delivered during the enforcement of CCJ 259/2015, promoted against the Agreement of the *Mesa* [Bureau] of 7 September 2017, declaring the said bill admissible and against those Agreements taken by the Plenary, by which its debate and voting was included in the agenda of 7 September 2017 as well as some essential formalities of the legislative procedure were abolished (FJ 5).

The *Mesa* of the Parliament, in the meeting held on 7 September 2017, agreed to admit the processing of the bill by means of an extraordinary urgency procedure and the publication of the bill "of Juridical Transition and founding of the Republic", and submitted by the parliamentary groups *JxS* and *CUP-CC* (Official Gazette of the Parliament of Catalonia, no. 507, of 7 September 2017). At the Plenary that same day, the President, at the request of one of the parliamentary groups signatories of the bill, submitted for voting to the Chamber, by

invoking Article 81.3 RPC, the modification of the agenda in order to include the debate and voting of the said bill, as well as the abolition of all parliamentary procedures, apart from partial amendments, debate and voting of the said bill, which was approved by the Plenary. A two-hour period was then granted in order to submit partial amendments, after which all the amendments submitted were put to the vote and, afterwards, the vote of the bill was held and finally approved.

The requests for review, the continued protests raised by parliamentary groups against the leave to proceed with the bill, the alteration of the agenda at the plenary session by which the debate and voting was included invoking Article 81.3 RPC, the abolition of parliamentary processing as well as the request for an opinion from the Council for Statutory Guarantees were entirely dismissed during its parliamentary processing.

b) As already stated in CC judgment 114/2017, whose legal ground 6 C) c) and d) is thereupon summarized, now the important thing is not the specific regulatory infringements claimed in the appeal, but the total and absolute breach of the legislative procedure governed by the RPC. In effect, as in the scenario ruled in that Judgment, in the present case "the bill which gave rise to the challenged Law was processed and passed [...] aside of any of the legislative procedures envisaged and regulated in the RPC and following an absolutely incorrect way (art. 81.3 RPC)", of which "the majority used it in order to improvise and articulate *ad hoc* an unusual channel through which the option to intervene and the rights of the remaining groups and deputies were at that majority's own discretion". That majority has therefore imposed "the creation of an uncommon ad hoc "proceedings", apparently similar to that of the single reading provided for in the RPC (whose art. 135.2, concerning that kind of proceedings, was and is still suspended by a decision issued by this Court of 31 July 2017, unconstitutionality appeal no. 4062/2017)", and has achieved with this action "an arbitrary and unique repeal of regulatory rules aiming at regulating the legal system, as well as an obvious infringement of specific provisions of RPC intended for its own amendment."

It is then wholly contestable, and confirmed once again here, that Article 81.3 RPC could be invoked "to include in the Plenary's agenda, with the purpose to be decided upon, an issue whose prior legislative processing was still unfinished", since "it is undeniable that to this end, the legislative proceedings should at least have commenced and been in progress, through

any of the ways provided for as *numerus clausus* by the RPC". Only then, when legislative proceedings have been instituted and are operational "those proceedings carried out and those still pending would also be identifiable, including or not the possibility of omitting or excluding on good grounds some of the latter to incorporate the issue in the Plenary's agenda."

The fact that Article 81.3 RPC gave rise to "the creation *extra ordinem* of legislative "proceedings" on its own criterion" in favour of the majority should be discarded, since it "would lead to the irrational and unbearable conclusion under the rule of law that each and every proceeding effectively provided for and regulated in the RPC would be merely of operational and exchangeable nature, through the free decision of the said majority". The Plenary of the Parliament of Catalonia had noticed this when it resorted to "altering the agenda when the legislative initiative, freshly admitted by the *Mesa*, had not even started its procedural path."

To conclude, the majority "under the alleged protection of a rule intended for the exceptional modification of the agenda", innovated the own RPC and "arbitrated for the case not the mere abolition, as stated by their speakers, of one or another procedural processing, but unprecedented "proceedings", designed and executed at their convenience". Thus, from the constitutional point of view, the most serious thing was not "the restraint, higher or lower -the highest in this case- of specific rights of representatives, but the subordination and subsequent downgrading of the entire rule of law to the rule of the majority, aside from any regulation."

b) Regarding the claim with reference to the obstacles encountered by the members of the Chamber in order to request an opinion from the Council for Statutory Guarantees on the bill, we must insist that the option to apply for it corresponds to those groups and deputies powered by Law 2/2009, of 12 February, governing the said Council, a guarantee granted by the said SAC (art. 76.2) and which incardinates as such power, under an applicable provision of the said Law [arts. 16.1.b), 23 b), 26.1 and 4 and 26 bis. 1 y 5] and of the RPC (art. 120), all along the legislative proceeding. The Chamber cannot remove the opportunity to request such opinion "without losing the integrity of the own legislative procedure and, at the same time, the rights of the representatives to exercise this specific power conferred by the Law and incorporated to its legal, constitutional status (art. 23.2

CE)". Hence, the Plenary of the Parliament of Catalonia, at that time and once again as already happened with the processing of the bill which gave rise to the Law 19/2017, "abolished this power without further ado, and the subsequent safeguards through the particular processing provided for the bill", and "carried it out under its exclusive authority, notwithstanding the continuous protests of deputies members of minorities and despite express warnings of the own Council for Statutory Guarantees" concerning the mandatory nature of granting a period for requesting an opinion from this Council following the publication of any bill [CCJ 114/2017, LG 6 D)].

c) It should therefore be settled that all along the parliamentary processing of the challenged Law, extremely serious violations of the legislative procedure were found, which undoubtedly affected the formation of the Chamber's will, the rights of minorities and the citizens' rights to take part in public affairs through their representatives (art. 23.1 and 2 CE).

It should be here pointed out, as already stated in CCJ 114/2017 [LG 6 E)], that "the primary role of any parliamentary assembly, and hence of the Parliament of Catalonia (arts. 152.1 CE and 55.1 SAC), is the representation of all its citizens; a role which is only properly fulfilled if those representatives elected by the electoral body for carrying it out do adhere on the whole to the proceedings provided for by the legal system and to the legal rules which, mostly integrated within the parliamentary rules of procedure, ensure no discriminatory participation for all representatives". Thus, only this "ensures [...] the necessary respect for minorities, without which the principle of the majority for the final adoption of decisions, equally indisputable, would jeopardize its legitimacy". To conclude, the Chamber's will is constitutional and therefore has legitimacy if, and only if, those legislative procedures are followed.

7. Upholding the appeal leads to declare the unconstitutionality and nullity, in its entirety, of the Law of the Parliament of Catalonia 20/2017, of 8 September, so-called "of Juridical Transition and founding of the Republic" (art. 39.1 LOTC).

R U L I N G

In consideration of all of the foregoing, the Constitutional Court, BY THE AUTHORITY CONFERRED BY THE CONSTITUTION OF THE SPANISH NATION,

Has decided

To uphold the present action on unconstitutionality and, consequently, declaring the nullity and unconstitutionality of the Law of the Parliament of Catalonia 20/2017, of 8 September, so-called "of Juridical Transition and founding of the Republic".

May this Judgment be published in the "Official State Gazette" (*Boletín Oficial del Estado*).

The present judgment was handed down in Madrid, on 8 November 2017.

[Signatures below]