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THE TC DECLARES THE UNCONSTITUTIONALITY AND NULLITY OF THE CATALONIAN “LEGAL TRANSIENCE” ACT, AND RECALLS THAT THE RIGHT OF AUTONOMY “IS NOT AND CANNOT BE MISTAKEN FOR SOVEREIGNTY”

The Plenary Meeting of the Constitutional Court (TC) has unanimously declared the unconstitutionality and nullity of Catalanian Parliament Act 20/2017, of 8 September, “*on legal and foundational transience of the Republic*”. The judgment, of which Ricardo Enríquez was the Reporting Judge, affirms that the challenged rule “*explicitly contravenes essential and indivisible principles of the Spanish constitutional order: national sovereignty, residing in the Spanish people, the unity of the Nation constituted as a social and democratic rule of law and the very supremacy of the Constitution, to which all public powers are subject, to thus include the Catalanian Parliament*”.

Furthermore, it states that the right of autonomy that the Constitution recognises in favour of nationalities and regions of Spain “*is not and cannot be mistaken for sovereignty*”, and recalls that a “*right of self-determination*”, interpreted as the right to “*promote and consummate*” a unilateral secession from the State, “*is not recognised in the Constitution, or may be claimed to form part of Spanish law through international treaties to which Spain is party*”, nor is it justified by international law”.

In this case, in the same way as in relation to the “*self-determination referendum act*” (which was declared unconstitutional in Constitutional Court Judgment (STC) 114/2017), the Court has ascertained that the challenged rule has unconstitutionality vices both in material terms and as regards its parliamentary processing.

The act being analysed “*is trying to substitute, with disregard for the reform procedures expressly foreseen by law, the constitutional and statutory order that is currently in force in Catalonia, with a transitional regulatory regime*”, to be subsequently replaced “*by a future constitution of the Republic of Catalonia*”. It constitutes “*an intended, total and absolute rupture, of a part of the State territory, from the constitutional and statutory order*”, which places the challenged rule “*in a resolved position of foreignness with respect to the constitutional order in force*”.

The Court has affirmed that the act contradicts “*the supremacy of the Constitution*” by trying to prevail over this fundamental rule; it had advised that, by passing the challenging rule, the autonomous Parliament has forgotten “*the permanent distinction between an objectivisation of the constituent power, formalised in the Constitution, and the actions of constituted public powers*”, and recalls that these “*may never surpass the limits and competences established*” by the constituent power.

As regards a breach of national sovereignty, the Court has upheld that in the current constitutional system *“only the Spanish people are sovereign, on an indivisible and exclusive basis”*, which is why *“no other subject or body of the State or any fraction of the people may intend, by declaring its sovereignty, to dispose of or break up national sovereignty”*. *“The Catalanian people [...] do not hold any sovereign power, which exclusively belongs to the Spanish Nation incorporated as a State”, nor is it “a legal subject competing with the holder of national sovereignty”*.

The Catalanian constitution, in an independent state, adds the judgment, is *“irreconcilable with the unity of the Spanish Nation on which the Constitution is founded”*. National sovereignty resides in the Spanish people, explains the Court, and *“this unity of the sovereign subject “is one of the pillars of a Constitution whereby the nation itself is constituted, at the same time, as a social and democratic rule of law””*. This State is *“common for all throughout the territory”*, with *“a compound or complex articulation due to the constitutional recognition of territorial autonomies [...]”*.

Catalonia, according to the definition contained in the Statute of Autonomy, is a *“nationality exercising its self-government, constituted as an Autonomous Community according to the Constitution and this Statute”*. Consequently, the Autonomous Community of Catalonia *“is derived from Spanish constitutional law and, as a result, from national sovereignty”*.

Once again, the Court recalls that the Constitution has room for *“all ideological conceptions”*. However, the conversion of a political programme into a law *“is only possible through constitutional reform procedures, which “must always and in any case be inexcusably observed””*. When a public power intends to unilaterally alter the constituted order, affirms the judgment, it *“departs from”* the path set by the law *“and consequently “irreparably harms citizen freedom””*. This is what was consummated by the Catalanian Parliament.

As regards the autonomous Parliament, the Plenary Meeting affirms that it passed the challenged act *“by totally overlooking constitutional loyalty”*; that it intended *“to de facto cancel, in the territory of the Autonomous Community and for the entire Catalanian people, the validity of the Constitution, Statute of Autonomy and any legal rules that did not succumb to its bare intent”*; and that, by acting in this way, it departed from the law and *“endangered, at the highest level, for all Catalanian citizens, the validity and effectiveness of any guarantees and rights they hold further to the Constitution and the Statute”*.

The judgment also analyses the legislative procedure followed in the Catalanian Parliament to pass the challenged act. It also reiterates at this point the arguments contained in STC 114/2017 and affirms that, as in the case of the *“referendum act”*, the act that is now challenged *“was processed and passed [...] disregarding any legislative procedures foreseen and regulated”* in the Parliament’s Regulations. It also affirms that the majority put in place an *“unheard-of “procedure” that was conceived and imposed at its convenience”*. This way of acting not only restricted minority rights but also subjected and consequently degraded the entire legal order to the will of the majority, irrespective of any rule”. Amongst other decisions adopted by the parliamentary majority, it was decided not to submit a report from the Statutory Guarantees Council.

To conclude, the Catalanian Parliament incurred *“very serious infringements of the legislative procedure”*, affecting *“without a doubt formation of the Parliament’s will, minority*

rights and the rights of all citizens to participate in public affairs through their representatives”.

Madrid, 8 November 2017