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40TH ANNIVERSARY OF SPAIN'S MEMBERSHIP TO THE COUNCIL OF EUROPE

The President of the Constitutional Court, Juan José González Rivas, and Magistrates Ricardo Enríquez and Cándido Cónde-Pumpido attended and intervened at the Commemorative Act of the 40th Anniversary of Spain's accession to the Council of Europe. The event took place on November 23rd at the Senate and at the Congress of Deputies.

During the inaugural session, President González Rivas defended Spain's position as *"a relevant Member State"* in the European Union, due to its condition of a *"prosperous"* and *"consolidated"* democracy. A country, he went on to say, where fundamental rights and freedoms *"are scrupulously respected (...) in accordance with the Constitution and with our laws"* and in harmony with the international treaties and conventions ratified by our country.

He equally emphasized the *"key role"* played by the Constitutional Court since its inception: in his view, it has contributed to the consolidation of the protection of fundamental rights and freedoms as the *"axis"* that defines our legal system and *"as the essential pillars of the entire construction on which our social life relies"*. He underscored that the role of the European Court of Human Rights (ECHR) has been equally fundamental in fulfilling this task. The President further explained that Spain is one of the States which has been least declared in violation of the Convention by that Court, a point that would prove the soundness of our system of legal guarantees and the extent to which the case-law issued by the Court has been assimilated by our public institutions.

Mr González Rivas reminded that Spain's incorporation to the Council of Europe in 1977 was *"a seamless demonstration of the trust that Europe had placed in our democratic Transition"* and, at the same time, *"a no less firm engagement, on the side of the Spanish State and its political forces, which led to a confident march towards that path of modernity"*.

Lastly, he referred to the decisive activity of the Constitutional Court in his condition of supreme interpreter of the Constitution as well as in the protection of the democratic principle and of the rights and liberties granted to the citizens. The Court is, indeed, the supreme guarantor of the supremacy of the Constitution and rule of law. Those are the three elements on which our Fundamental Law relies in order to guarantee *"the agreement for a common coexistence that the Spaniards signed with themselves in 1978"*. A *"firm, generous and open"* agreement which *"keeps accommodating concord within it"*.

Mr Ricardo Enríquez, Magistrate of the Constitutional Court, participated at the panel discussion *"Human rights protection and diversity of the European legal culture"* that took place at the Senate. During his intervention, he highlighted the influence impact in our legal system of Spain's membership at the Council of Europe and the ratification of the European Convention of Human Rights. Likewise, he emphasized the importance accorded by constitutional case-law to the reports issued by the European Commissioner for Human Rights.

and the Venice Commission.

With regard to the decisions rendered by the European Court of Human Rights, Magistrate Enríquez sought to underline the relevance of the “*principle of subsidiarity*”, inasmuch as its application by the Court leads to the recognition of a margin of appreciation accorded to the courts of State parties. The relevance of the application of this principle becomes all the more patent in view of one particular element: the number of State parties to the Convention and the differences that exist between their legal orders and case-law. Finally, he drew attention to the issues arising from the enforcement in Spain of the decisions of the Court.

Magistrate Cándido Conde-Pumpido participated in the panel discussion “*Representative democracy in Europe: threats and strengths*” that took place at the Congress of Deputies. During his intervention, he emphasized that, according to the case-law of the Constitutional Court, our legal system prevents opposing democratic legitimacy to constitutional legitimacy. In the same vein, it also prevents attributing any kind of superiority to the former over the latter. Such a conclusion derives from the understanding that only compliance of the Constitution provides legitimacy to the activity of public institutions. Magistrate Conde-Pumpido also reminded that, when public institutions do not abide by the laws, they are undermining their own authority, and to the same extent, the citizens’ duty to accept their decisions.

Finally, he made an allusion to the difference that exists between the models of representative democracy and direct democracy. The recent judgement of the Constitutional Court declaring the unconstitutionality and invalidity of the so-called Catalan “referendum-law” bears testimony to such difference.

Madrid, 23 November 2017