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THE COURT RULES THAT THE PARLIAMENT OF CATALONIA BREACHED THE RIGHT OF MEMBERS OF PARLIAMENT WHEN IT DENIED THE ISSUANCE OF A REPORT BY ITS ADVISORY BODY CONCERNING THE LAW ON LEGAL TRANSITION

The Second Chamber of the Constitutional Court of Spain declared unconstitutional and invalid the decisions whereby the Bureau of the Parliament of Catalonia refused the request made by the Socialist Parliamentary Group to ask the Council of Statutory Guarantees (a public advisory body) for a report about the draft law on legal transition and the foundation of the republic. The ruling, unanimously approved and drafted by Magistrate Juan Antonio Xiol, considers that both decisions made by the Bureau breached the right of said members of Parliament to exercise their representative function (art 23.2 of the Spanish Constitution [CE]) as well as, in connection with the former, the right of citizens to participate in public affairs (art 23.1 CE).

The decisions of the Bureau of the Parliament of Catalonia challenged by the Party of the Socialists of Catalonia (PSC) Parliamentary Group were part of the parliamentary procedure that culminated the approval of Law 20/2017 by the Parliament of Catalonia, dated September 8th, on legal transition and the foundation of the republic. This Law was declared unconstitutional and wholly invalid (Judgement 124/2017 of the Constitutional Court) for breaching essential principles enshrined in the Constitution as well as for “procedural irregularities” during the parliamentary procedure.

In that former Judgement, the Court noted that the law-making process whereby the Law was approved was carried out “*excluding all the law-making procedures established and governed in the Regulation of the Parliament of Catalonia, improvising and articulating an extraordinary ad hoc procedure*” which subjected to the will of the majority “*the possibilities of intervention and the rights of the rest of groups and MPs*”.

The arguments put forward in that former Judgement are, as noted now by the Court, closely relate to the present appeal of unconstitutionality. In fact, preserving political pluralism requires not only respecting “*the position and rights of minorities*”, but also the rights of their representatives so that they may exercise their function on an equal footing and according to the applicable regulations. This being the best guarantee to uphold the citizens’ fundamental right to participate in public affairs.

According to the Court, “*those fundamental rights might be violated in the event of breaches of the Regulations of the Parliament or any other rules governing parliamentary procedures, which would affect the core of the function of political representatives; including the legislative function as a fundamental element*”.

In this particular case, the elimination of the parliamentary formality consisting of requesting the report to the aforementioned advisory body “*was carried out lacking any legal base in the Regulation of the Parliament of Catalonia and the rest of the applicable law*”. Considering that such formality guarantees “*the constitutional correctness of law-making initiatives*” and constitutes a

legal prerogative of MPs and parliamentary groups, its suppression implies, according to the ruling, an “*erosion of the integrity*” of the law-making procedure and of the rights of MPs to exercise that faculty. Consequently, eliminating the formality whereby the report of the advisory body is requested affects the essential core of the parliamentary function.

The judgement reminds that the “*fundamental function*” of any parliamentary assembly and, therefore, also applicable to the Parliament of Catalonia, consists of “*representing citizens*”; “*a function that is only fulfilled if those elected by the electoral body [...] comply with the procedures that the legal system establishes and with the legal rules that [...] ensure the exercise of rights and powers of MPs, as well as the non-discriminatory participation of all the representatives*”. Only thus, it is further asserted, may “*the respect of minorities*” be secured “*without which the principle of majority for the adoption of final decisions would jeopardize its legitimacy*”.

The Court concludes that the challenged decisions, which it declares invalid, violated the appellant MPs’ right to exercise their representative function with due respect to laws and also to the right of citizens to participate in public affairs through their representatives.

Madrid, 14 March 2018