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THE CONSTITUTIONAL COURT UPHOLDS THE AMPARO APPEAL OF THE SOCIALIST GROUP OF CATALONIA CONSIDERING THAT THE BUREAU OF THE REGIONAL PARLIAMENT VIOLATED ITS RIGHT TO POLITICAL PARTICIPATION

The Plenary Session of the Constitutional Court has unanimously decided to uphold the appeal for constitutional protection (*"recurso de amparo"*) filed by the Socialist Group of the Parliament of Catalonia against the Resolution of the Bureau of said Parliament dated October 4th 2017. Through the challenged resolution, the Catalan Parliament approved and admitted to process the draft proposal brought by the Junts pel Sí Group and by the CUP party, so that the President of the *Generalitat* could appear before the plenary session of the Regional Parliament. The purpose of the hearing was to assess the results of the referendum held last October 1st as well as its effects, in accordance with article 4 of the Referendum Law on Self-Determination. Magistrate Juan Antonio Xiol Ríos was the Rapporteur for this ruling.

The judgment finds that the Bureau infringed the right to hold a public office (Article 23.2 of the Spanish Constitution [CE]) of the appellants but also the right of citizens to participate, through their representatives, in public affairs (Article 23(1) CE). The ruling declares the said Resolution null and void. Likewise, it declares the invalidity of the subsequent resolution rejecting the motion to reconsider.

The Court points out that the present application to seek amparo protection fulfils the "*special constitutional relevance*" requirement. This is so because, as already stated in the former Judgment 134/2017, dated October 5th, by which it was granted leave to proceed, the issue raised by the appellants has a relevant and general economic impact and general political consequences.

The ruling explains that, in accordance with the case-law of this Court (see the following judgments: STC 107/2016, 108/2016 and 109/2016, all of them dated June 7th), the fundamental right to political participation is not violated when the Bureaus admit initiatives whose content may not be in conformity with the Constitution, even in situations in which the contradictions they may incur are clear and evident.

However, according to the Court, the situation is different in the event the Bureau's decision constitutes a blatant failure to comply with the ruling of the Constitutional Court. All public authorities, including the Legislative Chambers, are bound by the Court's rulings (article 87.1 of the Court's Organic Law [LOT]). Therefore, the judgment underlines that – in admitting the said proposal – the Bureau openly failed to comply with its duty of obedience. Thus, it is this failure that leads to determine the Bureau's responsibility for the aforementioned constitutional violations, and not the material content of the draft proposal.

The main point, in this respect, is therefore that the Bureau processed the draft proposal while cognizant that there had been a ruling rendered by the Court on this issue that had prevented it from carrying out this act. The Plenary Session of the Constitutional Court considers that, in the present case, there are exceptional circumstances which lead to the determination that this parliamentary

organ failed to abide by the duty to respect the suspension of the Referendum Law on Self-Determination, as well as the suspension of the Decree calling for the referendum, as declared by two jurisdictional decrees (*providencias*) dated September 7th, 2017.

The Court concludes that the violation of this fundamental right leads to the violation of the right of the citizens of Catalonia to participate, through political representation, in public affairs (Article 23.1 of the Spanish Constitution) and affects the role of the Parliament of Catalonia. Indeed, this Parliament represents the people of Catalonia (Article 55.1 of the Catalan Statute of Autonomy) and not only certain political forces, even if they represent the majority.

Madrid, 8 May 2018