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CONSTITUTIONAL COURT ANNUAL REPORT FOR 2017

The President of the Constitutional Court, M. Juan José González Rivas, has presented to His Majesty the King of Spain the Annual Report of the Constitutional Court for 2017. The Report shows, for the third year in a row, a significant decrease in the amount of pending cases both before the Plenary and before the Chambers of the Court. At the end of the year, the amount of appeals filed was slightly lower than that of the previous year. Indeed, 6,381 appeals were brought in 2017, whereas 6,774 had been lodged in 2016. Thus, this year witnessed a decrease of 5.8 % in the number of appeals.

Therefore, the demand for constitutional justice has slightly diminished in the year 2017. Plaintiffs brought more actions of unconstitutionality (*“recurso de inconstitucionalidad”*) than in the previous year (47, compared to the 36 lodged in 2016). In the same way, more appeals in other types of judicial processes were filed before the Court (four challenges against provisions of the Autonomous Communities and six preliminary questions about regional tax provisions). However, the main flow of disputes received by the Constitutional Court – the appeals for constitutional protection (*“recurso de amparo”*) – have decreased: there were 6,286 of them compared to the 6,685 lodged in 2016. Finally, 33 questions of unconstitutionality were brought before the Court, compared to 44 raised in 2016, as well as 5 constitutional conflicts of competences, compared to the 12 analysed in 2016.

Beyond this statistical data, the jurisdictional activity of the Constitutional Court during 2017 was characterized by the situation experienced in the Autonomous Community of Catalonia. Especially, the Court’s activity has focused on the legal response it has provided to that situation, in order to preserve the limits that the Constitution sets to fulfil its role of being a framework of integrative coexistence for all Spanish citizens.

In particular, the Court has rendered several pronouncements about the validity of two laws adopted by the Parliament of Catalonia. Firstly, about Law 19/2017, dated September 6th, on the *“referendum of self-determination”*; and secondly, about Law 20/2017, dated October 17th, on *“legal transition and the foundation of the republic”*. Both Laws were declared invalid and unconstitutional by judgements 114/2017, dated October 17th, and 124/2017, dated November 8th. The said laws aspired to set up an exceptional legal regime which, through the self-attribution of a legal supremacy over any other legal rules that might contradict them, blatantly infringed the Spanish Constitution and the Statute of Autonomy of Catalonia.

Against this backdrop, the Constitutional Court has, from a purely legal perspective, unwaveringly defended the supremacy of the Constitution, national sovereignty and the indissoluble unity of the Spanish Nation. Through its rulings, the Court has invariably strived to act with celerity, moderation and proportionality.

Regarding its non-jurisdictional activities, the Court remains unaltered in its will to pursue the path towards a maximum degree of transparency, *inter alia* by making this institution more accessible through a website full of detailed information. The commitment of the Court has been acknowledged by the official Council on Transparency and Good Governance, whose

"Evaluation report of constitutional organs and regulators" has rated the Constitutional Court with 9, 87 points out of 10, due to its thorough observance of the obligations established by the Law on Transparency. With the same objective in mind, the Court keeps publishing an ever growing number of press releases about the rulings it renders, be they jurisdictional decrees, decisions or judgements. This practice paves the way for an immediate diffusion of the most relevant jurisdictional resolutions and contributes to a better understanding, in particular by citizens, of the constitutional function fulfilled by the Court.

NEW CASES

The general registry of the Constitutional Court has received 6,381 cases in 2017; that is to say, 393 less than during the year 2016. This slight decrease in the demand for constitutional justice has thus represented a decline of 5.80%. Similarly, less *amparo* appeals were brought during 2017 than during 2016 (6,286 against 6,685, a 5.96% decrease), and the same happened concerning questions of unconstitutionality (33 against 44, a 25% decrease) and concerning constitutional conflicts (which declined from 12 to 5, including 3 positive conflicts of competence and 2 conflicts between constitutional organs). On the contrary, the amount of actions of unconstitutionality increased (47 were brought in 2017, against 32 in 2016; a 46.87% hike). Finally, 4 challenges against provisions of Autonomous Communities and 6 preliminary questions about the validity of regional tax provisions were also filed to the Court.

Once more, following a common trend in the history of the Constitutional Court, *amparo* appeals constitute the main legal actions. They represented 98.51% of the new cases brought before the Court. The overwhelming majority of the *amparo* appeals (6,216) were brought by private persons, including 5,468 actions lodged by individuals and 748 by legal persons. Public entities brought 65 *amparo* appeals. Neither the Ombudsman nor the Prosecutor's Office filed *amparo* appeals.

Concerning the origin of the appeals, once more the appeals brought against jurisdictional decisions rendered in criminal matters were predominant: they were 3,256, 51.79% (a percentage that rises to 53.59% if we add the 113 *amparo* appeals concerning penitentiary surveillance). This number is slightly higher than that for *amparo* appeals concerning criminal cases brought in 2016, when they were 3,169 (3,492 if those related to prison supervision courts are included). Likewise, a small increase was also registered in the number of *amparo* appeals concerning decisions on civil matters, which went up to 1,117 (17.76%) from 1,086 (16.25%) the previous year. The same happened concerning disputes related to social cases, which rose from 412 in 2016 (6.16%) to 513 in 2017 (8.16%). On the contrary, 2017 maintained decreasing trend of appeals related to administrative issues, which from 1,659 in 2016 to 1,200 in 2017.

TABLE 1

New cases	2013	2014	2015	2016	2017
Actions of unconstitutionality	76	60	42	32	47
Questions of unconstitutionality	106	141	113	44	33
<i>Amparo</i> appeals	7.376	7.663	7.203	6.685	6.286
Positive conflicts of competence	12	5	5	10	3
Negative conflicts of competence	-	3	-	-	-
Conflicts between constitutional organs	-	-	-	1	2
Conflicts for the defence of local autonomy	2	2	2	1	-
Challenges of resolutions and non-legal provisions of the Autonomous Communities	1	4	1	-	4
Petitions about international treaties	-	-	-	-	0
Preliminary questions about regional tax provisions	-	-	2	1	6
Total	7.573	7.878	7.369	6.774	6.381

In 4,689 of the appeals brought, plaintiffs sought protection for one or some of the jurisdictional guarantees established in article 24 of the Constitution (that is to say, these rights were invoked in 74.59% of the *amparo* appeals). The right to equality proclaimed in article 14 of the Constitution was invoked in 795 *amparo* appeals (12,65% of the total number of appeals). Other fundamental rights and public liberties which may be invoked in *amparo* proceedings were raised in 1,679 cases, i.e. 26,71%, of which the invocation of the right to criminal legality (594 cases, 9.45%) and of the right to liberty and security (364 cases, 5.79) were the preponderant ones.

Nonetheless, only 70 were granted leave to proceed and, thus given the opportunity to be heard and resolved through a Court judgement. This represents 1.27% of all the *amparo* appeals on which the Court has ruled. The other 98.73% were not admitted. A conspicuous feature of this data is that, more than 10 years after the legal reform that introduced this requirement, more than 1 out of 7 *amparo* appeals (823 appeals, 13.56% of those that were not admitted), do not even mention a minimal justification of the special constitutional relevance of the respective case. This fact deserves to be taken into consideration by all stakeholders in constitutional processes, and especially by the lawyers and jurisdictional representatives to whom the law accords the responsibility to defend the fundamental rights and freedoms of the citizens.

47 actions of unconstitutionality were brought against laws of the Autonomous Communities; 31 were brought by the President of the Government and 3 by the Ombudsman;

the Governments and the Parliaments of Autonomous Communities brought two appeals against national laws and legal provisions, and Members of Congress and Members of the Senate brought 4 appeals against national laws and legal provisions and 7 against legal provisions of the Autonomous Communities.

TABLE 2 (*)

Autonomous Communities	Actions of unconstitutionality		Positive conflicts of competence	
	About national laws	About a law of an Aut. Comm.	Brought by the central Government.	Brought by the Government of an Aut. Comm.
Basque Country	-	2	-	-
Catalonia	2	16	2	-
Galicia	-	-	-	-
Andalusia	-	2	-	-
Asturias	-	-	-	-
Cantabria	-	-	-	-
La Rioja	-	-	-	-
Murcia	-	1	-	-
Valencia	-	3	-	-
Aragón	-	2	-	-
Castilla-La Mancha	-	1	-	-
Canarias	-	-	1	-
Navarra	-	-	-	-
Extremadura	-	2	-	-
Baleares	-	2	-	-
Madrid	-	-	-	-
Castilla y León	-	-	-	-
Total	2	31	3	

*) The above Spanish Autonomous Communities are listed in the order of approval of their Statutes of Autonomy

Over the course of the year, 33 questions of unconstitutionality were raised: 19 came from courts of the different orders (18 in the case of state laws and 1 in the case of autonomous legislation), nine by the Superior Courts of Justice (in the case of six state laws and three regional laws), two by the Supreme Court (two state and three regional laws), two by the Provincial Courts (with the same distribution of subject matter: one state law and one regional law) and one by the *Audiencia Nacional* in the case of a state law. The judicial bodies asked for a preliminary ruling on six questions relating to the validity of provincial tax legislation.

In 2017, three positive conflicts of jurisdiction were promoted by regional governments, two conflicts of competences between constitutional bodies and four challenges to regional provisions were raised by the Central Government.

JUDGMENTS ISSUED

TABLE 3

Decisions rendered	2013	2014	2015	2016	2017
Court Judgment					
Plenary Session	129	95	107	125	103
First Chamber and its Sections	39	48	67	37	22
Second Chamber and its Sections	51	72	98	66	31
Total	219	215	272	228	156
Final Court Decisions					
Plenary Session	43	52	64	83	28
First Chamber and its Sections	36	57	37	18	12
Second Chamber and its Sections	32	48	24	20	13
Total	111	157	125	123	53
Jurisdictional decrees on inadmissibility and termination					
Plenary Session	-	-	2	-	-
First Chamber	2.802	3.275	4.258	3.653	3.158
Second Chamber	3.082	3.406	4.107	3.851	2.952
Total	5.884	6.681	8.367	7.504	6.110
Interlocutory appeals	187	148	104	86	122
Jurisdictional decrees on admissibility	264	208	196	127	140
total of final resolutions (judgments+ final decisions + final decisions + final jurisdictional decrees)	6.214	7.051	8.764	7.855	6.319
Total number of resolutions issued	6.665	7.409	9.064	8.068	6.581

A total of 6,319 decisions were issued in 2017, a number which is significantly lower than in 2016 (8,068 decisions adopted in that year). The Court delivered 156 judgments over the past year. More than half of them (103) were adopted by the Plenary Session of the Court; the other 53 were rendered by the Chambers (22 by the First Chamber and 31 by the Second Chamber). The decisions of the Plenary resolved unconstitutionality actions, constitutional conflicts and challenges of provisions adopted by autonomous communities (70 for appeals of unconstitutionality; nine for question of unconstitutionality; 12 for positive conflicts of competence; three for challenges of autonomous communities' provisions; two for conflicts in defence of local autonomy; three for preliminary rulings around the validity of local tax regulations and four in *amparo* proceedings as previously mentioned.

In addition to ruling on appeals, the Court has issued a large number of other resolutions (Court Decisions and jurisdictional decrees) to resolve on the admission or inadmissibility of appeals or to promote and enforce constitutional processes. The total number of decisions rendered in 2017 was 175 (34 fewer than in 2016). Out of these, 76 were issued by the Plenary, 19 by the First Chamber and 28 by the Second Chamber. The remaining 52 were rendered by the Sections of the Court.

THE PROCEDURE FOR THE ADMISSION OF APPEALS

In 2017, the Plenary Session has heard 70 cases of unconstitutionality and constitutional conflicts, as well as one application for *amparo*, representing ten more cases compared to 2016 where the Plenary admitted a total of 60 cases of unconstitutionality and constitutional conflicts. With regard to *amparo* appeals, the Chambers and Sections of the Court granted leave to proceed to 70 appeals and issued seven decision of inadmissibility, 5,690 orders of inadmissibility and 420 orders of termination prior to the decision on the admission of applications and appeals for *amparo*.

This report includes a table that summarizes the grounds for admission of *amparo* appeals, according to the criteria used in the various decisions. The predominant motivation was the absence of constitutional case law (27, 38.03% of the claims declared admissible), followed by the clarification or adjustment in the doctrine, as a result of a process of internal rethinking process (17, 23.94%) and the general and repeated failure to comply with the constitutional doctrine or the existence of contradictory judicial decisions (8, 11.27%). **[See Table 4]**

TABLE 4

Grounds for admissibility of <i>amparo</i> appeals	Number of appeals	Percentage
Lack of constitutional case law	27	38,03
Clarification or adjustment in the case law of the Court, as a result of an internal rethinking process	17	23,94
Clarification or adjustment in the case law of the Court as a result of regulatory changes	4	5,63
Potential legal grounds of the violation	4	5,63
Potential violation due to repeated jurisprudential construction of the law	1	1,41
General and repeated breaches of the Constitutional Doctrine, contradictory judicial decisions	8	11,27
Potential denial of compliance with the Constitutional Doctrine through judicial decisions	4	5,63
Social or economic impact	-	-
Major political consequences	2	2,82
Other reasons	4	5,63
Unspecified reasons	-	-
Total	71	100

TABLE 5

Grounds for inadmissibility of <i>amparo</i> appeals	Number of appeals	Percentage
Lack of justification of the special constitutional relevance requirement	823	13,56
Unsatisfactory justification of the special constitutional relevance requirement	2.396	39,48
Absence of special constitutional relevance	1.173	19,33
No infringement of the fundamental right invoked	105	1,73
Failure to report infringement of the fundamental right	25	0,41
No exhaustion of prior judicial remedies	576	9,49
Late submission of the appeal	298	4,91
Failure to remedy procedural defects	524	8,63
Several reasons	149	2,45
Other reasons	-	-
Total	6.069	100

With regard to the inadmissibility of appeals of *amparo*, a very high percentage is again represented by those related to the unsatisfactory justification of the special constitutional relevance (39.48%), to the lack of justification of the constitutional relevance (13.56%) or, directly, to the absence of such a requirement (19.33%). These three grounds represent 72.37% of the total number of dismissed *amparo* proceedings. [See Table 5].

PENDING CASES

In 2017, the Plenary Session has received 95 new appeals, admitted 70 and dismissed 24 by jurisdictional decree. At the end of the year, a total of 10 cases remained pending for decision regarding their admissibility, 1 less than in 2016. Likewise, in the same year, the Plenary issued 103 judgments and resolved (by judgment or by order of termination) 113 cases. However, the Plenary ended the year with 42 cases less pending than in 2016.

As for the Chambers, they received a total of 6,285 new cases last year (the First Chamber heard 3,155 and the Second Chamber 3,130). At the end of the year, the First Chamber had 31 appeals for *amparo* pending, accumulated in 24 proceedings, with none pending in its Sections. The Second Chamber had 51 appeals for *amparo* pending in 50 proceedings. It also had no pending cases in its Sections.

TABLE 6

Court decisions overturned (*)		
	Judgments	Other resolutions
Supreme Court	9	1
High Courts of Justice	6	2
National High Court	10	-
Regional Courts	9	6

Courts of first instance	4	21
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(*) Separate figures are given for judgments and other resolutions (decisions or jurisdictional decrees), and only those judicial bodies issuing resolutions annulled by decisions of the Constitutional Court are included, regardless of the number of decisions annulled in each ruling; if a constitutional ruling annuls one or more decisions and, at the same time, other resolutions of the same judicial body, only the annulment of the decision is reported.

TABLE 7

Cases resolved	2013	2014	2015	2016	2017
Appeals of unconstitutionality	83	62	65	90	75
Questions of unconstitutionality	78	84	172	120	37
Amparo appeals					
Through Judgment	87	109	96	88	53
Through Decision of admissibility	5	3	-	3	8
Through Jurisdictional Decree of inadmissibility	5.342	6.659	7.880	7.019	5.690
On other grounds	574	109	535	478	432
Consolidated with the above	3	2	2	1	-6
Total	6.012	6.882	8.513	7.625	6.177
Positive conflicts of competence	40	20	7	12	12
Negative conflicts of competence	-	3	-	-	-
Conflicts between constitutional organs	-	-	-	-	-
Conflicts in defence of local autonomy	4	5	3	3	2
Challenge of provisions without the force of law and resolutions of the Autonomous Communities.	-	1	6	-	3
Petitions about international treaties	-	-	-	-	-
Preliminary ruling on local tax rules	-	-	-	1	9
Total number of cases resolved	6.217	6.968	8.759	7.851	6.315

TABLE 8

Admitted cases pending judgment	2013	2014	2015	2016	2017
Appeals of unconstitutionality	183	187	163	106	78
Questions of unconstitutionality	71	108	47	24	14
Positive conflicts of competence	42	26	24	22	13

Negative conflicts of competence	-	-	-	-	-
Conflicts between constitutional organs	-	-	-	1	3
Conflicts in defence of local autonomy	7	5	4	2	-
Challenge of provisions without the force of law and resolutions of the Autonomous Communities.	1	4	-	-	-
Petitions about international treaties	-	-	-	-	-
Preliminary ruling on local tax rules	-	-	3	1	1
Amparo appeals	167	116	99	74	84
Total number of proceedings pending judgment by the Plenary Session	251	252	217	157	115
Total number of proceedings pending judgment by Chambers and Sections	212	190	117	70	76
TOTAL NUMBER OF PROCESSES PENDING JUDGMENT	463	442	334	227	191
Total number of cases pending judgment by the Plenary Session	259	256	223	160	116
Total number of cases pending judgment by Chambers and Sections	212	190	117	70	84
TOTAL NUMBER OF CASES PENDING JUDGMENT	471	446	340	230	200

TABLE 9

Cases pending leave to appeal	2013	2014	2015	2016	2017
Total number of cases pending leave to appeal to the Plenary	43	55	57	11	10
Total number of cases pending leave to appeal to Chambers	3.738	4.463	3.312	2.358	2.378

Madrid, 23 July 2018