



## PRESS RELEASE No. 91/2018

### THE CONSTITUTIONAL COURT MAINTAINS THE SUSPENSION OF CATALAN LAW 2/2018, WHICH ALLOWS, *INTER ALIA*, FOR THE REMOTE INVESTITURE OF THE PRESIDENT OF THE GOVERNMENT OF CATALONIA

The Plenary Session of the Constitutional Court has, by unanimity, resolved to maintain the suspension of articles 1 and 2 of Catalan Law 2/2018, dated May 8<sup>th</sup>. This regional Law modified Catalan Law 13/2008 with the purpose of allowing the Plenary of the Parliament of Catalonia to authorize the organisation of an investiture session without the physical attendance nor the intervention of the candidate to the Presidency of the Autonomous Community. Likewise, the aforementioned modifications regulated other parliamentary proceedings without the physical attendance of the Government of Catalonia and other collegial bodies.

The Constitutional Court has addressed this question as the period of five months established by article 161.2 of the Constitution about to expire, in order to decide on the lifting or the maintenance of the suspension. It has done so after receiving the submissions of the Government of Catalonia, a procedural stage that had been suspended during the period of direct rule by the central Government in application of article 155 of the Constitution.

Thus, the decision of the Court considers that the suspension of the challenged Law must not be lifted. In particular, the operative part of the decision holds that *“the potential damages that might result from the appointment of a President of the Government of Catalonia, as established by article 1.1 of Law 2/2018, would be significant, were the law to be declared unconstitutional at a later stage”*. Thereby, *“the presumption of legality of the regional law must remain suspended, and give precedence to final resolution of the appeal, given the considerable risk that its application would entail for legal certainty”*. In that hypothetical case, *“the invalidity of a process of investiture of the President would put into question the totality of the actions undertaken by the Government that is led by him”*.

The Court's decision reminds the significance and scope of the executive and administrative functions attributed to the Presidents of Spanish Autonomous Communities by article 152.1 of the Constitution and by articles 10 to 12 of Catalan Law 13/2008, which regulates that office in detail. Among those functions, the Court notes the following: *“appointments, the call for elections, the signature of administrative conventions, the delegation of competences, the exercise of representative functions and the establishment of general directives for the action of the Government [of the Autonomous Community]”*.

Next, the Court addresses the establishment of governmental sessions which do not require the physical presence of the President nor any minimum quorum, which the Law does without providing any specific reason to justify such a choice. Regarding this matter, the Court applies, *mutatis mutandi*, the line of reasoning applied for the investiture session: *“It is easy to conclude that, were the acts adopted by the Government through remote sessions to be*

*annulled because of their unconstitutionality, the whole range of political and legal actions undertaken by the [autonomous] Government would be put into question”.*

Finally, the Court underscores that, confronted with this state of affairs and with its unavoidable detrimental consequences for the principles of legal certainty, neither the Parliament nor the Government of Catalonia spell out the particular damages that the maintenance of the suspension would produce, concerning both the remote investiture session and the governmental sessions. According to the decision, the only argument they raise consists of a generic description of the central Government’s appeal as being of a preventive nature. The Court holds that this is “*a substantive allegation on the merits of the case*” which does not belong to this procedural stage, which deals with precautionary measures.

Madrid, 27 September 2018