



PRESS RELEASE No. 135/2018

THE CONSTITUTIONAL COURT HAS PARTIALLY UPHELD THE GOVERNMENT'S APPEAL AGAINST MOTION 5/XII OF THE PARLIAMENT OF CATALONIA, WHICH INTENDED TO RATIFY THE OBJECTIVE OF THE INDEPENDENCE PROCESS

The Plenary Session of the Constitutional Court has partially upheld, by unanimity, an appeal against a provision of an Autonomous Community (*“impugnación de disposición autonómica”*) filed by the central Government. This appeal was brought against Motion 5/XII of the Parliament of Catalonia “on the regulations adopted by this Parliament and annulled and suspended by the Constitutional Court”, a motion that was adopted by the regional parliament on July 5th 2018. Therefore, the Court has declared the unconstitutionality and invalidity of paragraphs 1 to 3 of the challenged Motion. By contrast, it has dismissed the allegations of unconstitutionality concerning paragraphs 4 and 5.

The central Government considered that paragraphs 1 to 5 of the challenged motion were contrary to articles 1.1, 1.2, 1.3, 2, 9.1 and 168 of the Spanish Constitution, as well as contrary to articles 1, 2.4, 3 and 4.1 of the Statute of Autonomy of Catalonia. In turn, the Parliament of Catalonia had requested the dismissal of the appeal, alleging that the political objectives of the motion did not incur any kind of unconstitutionality.

Paragraph 1 of the Motion, now declared to be unconstitutional, reads as follows: *“The Parliament of Catalonia, following the acts of the State through the Constitutional Court, the Supreme Court, the National High Court [“Audiencia Nacional”] (...) ratifies its strong determination to pursue the necessary acts, as adopted and foreseen by this Parliament, in order to democratically achieve and complete the independence of Catalonia”*.

The judgement of the Constitutional Court, drafted by Magistrate Ricardo Enríquez, points out that this paragraph *“must be annulled in its integrity, since it leaves no room to consider that its effects are circumscribed to the parliamentary sphere. In addition, it posits a allegedly exclusive democratic legitimacy of the Parliament of Catalonia in contrast with an alleged disregard for legality and lack of legitimacy of the institutions of the State mentioned therein”*.

Further, paragraph 2 of the Motion, reads as follows: *“The Parliament of Catalonia reaffirms the political objectives enounced in Resolution 1/XI, dated November 9th, on the initiation of a political process in Catalonia as a consequence of the electoral results of September 27th, 2015 (...)”*.

According to the Court, this paragraph must also be declared unconstitutional and invalid, since it considers that, by establishing a connection with Resolution 1/XI, which was also declared unconstitutional, this paragraph suggests that the Parliament of Catalonia aims to exclude the use of the appropriate constitutional mechanisms (i.e. the constitutional revision

procedure set out under Title X of the Constitution) in order to achieve the transition of Catalonia into an independent State.

The judgement underscores that, in a social and democratic State subject to the rule of law, there is no possible legitimacy outside legality, since *“the legitimacy of an act or a policy of any public authority consists, basically, in its conformity with the Constitution and the legal order”*.

Finally, paragraph 3 of the challenged motion reads as follows: *“The Parliament of Catalonia has repeatedly expressed its support to the right to decide and to the right of self-determination and, consequently (...) reaffirms its commitment to attain these political objectives through democratic and non-violent means”*.

The judgement has also declared the invalidity of this paragraph since the assertion, by a public authority, that sovereignty belongs to the *“people”* of an Autonomous Community constitutes *“a correlative denial of the national sovereignty that, according to the Constitution, belongs only to the Spanish people as a whole. Thereby, that sovereignty may not be misattributed to any fraction or part of that people”*.

Madrid, 27 December 2018