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**THE PLENARY OF THE CONSTITUTIONAL COURT ENDORSES
ORGANIC LAW 1/2024 OF 10 JUNE 2024 ON AMNESTY FOR
THE INSTITUTIONAL, POLITICAL AND SOCIAL
NORMALISATION IN CATALONIA, EXCEPT IN THREE ASPECTS**

The Plenary of the Constitutional Court has partially upheld the appeal of unconstitutionality filed by more than 50 deputies and 50 senators of the Popular Parliamentary Group against Organic Law 1/2024 on Amnesty for Institutional, Political and Social normalisation in Catalonia (LOANCat).

The judgment, with Vice-president of the Court Inmaculada Montalbán Huertas as rapporteur, upholds the constitutional legitimacy of the amnesty granted by the *Cortes Generales* (the Spanish Parliament), except in the following three aspects:

1. Article 1(1) is declared unconstitutional by omission for being contrary to the principle of equality (Art. 14 of the Spanish Constitution) by not granting amnesty to those conducts aimed at rejecting the Catalan drive for independence (the so-called "procés").
2. The second paragraph of Art. 1(3) is declared unconstitutional, null and void because it allows amnesty for conducts that are subsequent to the approval of the LOANCat, in violation of Art. 14 SC.
3. Paragraphs 2 and 3 of Art. 13 are not declared unconstitutional as long as they allow the hearing of all the parties involved in the proceedings before the Court of Audit in the procedural step referring to the application of the LOANCat.

After explaining the grounds why it was decided not to ask for a preliminary ruling before the CJEU, the reasoning of the judgment is structured in three parts.

A) In the first part, the Court analyses whether or not the concept of amnesty, considered in the abstract, is compatible with the Constitution.

The judgment rejects the thesis that the Constitution prohibits amnesty as a legal concept for the sole reason that it does not expressly authorise it. Constitutional silence cannot be interpreted as a prohibition of such a concept. Everything that is not constitutionally prohibited falls, in principle, within the scope of the legislator's decision. An express constitutional authorisation is not required of the *Cortes Generales*, which, by virtue of the democratic principle, occupy a central position in our legal system.

Based on this premise and on the fact that there is no rule that expressly prevents the granting of amnesties, the judgment then examines whether it is possible to implicitly derive the prohibition of amnesties from the Constitution. Thus, with regard to the prohibition of general pardons contained in Art. 62(i) SC, it is determined that the prohibition of amnesty cannot be derived from this rule. In accordance with constitutional case-law, the judgment emphasises that both

concepts have a different legal nature. While the pardon is a prerogative of the executive branch referring to individual convictions, the amnesty can only be granted by law by the Cortes Generales, is of a general nature, and entails retroactively exempting the application of punitive rules, both with respect to the possibility of being tried for the commission of the illegal acts that such rules define, and to extinguish, totally or partially, the convictions to which their application has given rise.

The Court also ruled out that the amnesty is contrary to the principle of separation of powers, to the reservation of jurisdiction [Art. 117(3) SC], as well as to the constitutional obligation to enforce final judicial decisions (Art. 118 SC). In granting an amnesty, Parliament is not replacing the courts in the determination of guilt, but rather establishing that, on extra-legal grounds, punitive liability that may arise from the commission of certain wrongs committed in the past is extinguished. For these same reasons, this type of law does not violate the constitutional obligation to enforce final judicial decisions (Art. 118 SC). In short, amnesty laws neither judge nor execute what has been judged.

It is also ruled out that amnesty, as a legal concept, is incompatible with the right to criminal legality [Art. 25(1) SC]. The absolute requirement of generality of the criminal laws invoked by the appellants does not derive from this right. Rather, concreteness and clarity in the scope prohibited by this type of criminal law and of the legal consequences that derive from non-compliance is required.

B) The second block of arguments of the judgment is aimed at assessing whether, having admitted the constitutional possibility of amnesty, the challenged law is compatible with the constitutional principles and rights invoked by the appellants.

The judgment first examines whether the amnesty must necessarily respond to an ideal of justice, as is the case in transitional political processes. The Court denies such a requirement, but it does consider that this type of law is constitutionally admissible only when it responds to an extraordinary situation. In the case of the LOANCat, such exceptionality is specified in the constitutional crisis derived from the Catalan secessionist process, which represented an unprecedented challenge to the constitutional order, to the unity of the State and to national sovereignty, as well as a deep fracture of democratic coexistence, which gave rise to the opening of criminal and sanctioning proceedings to hold accountable those who committed illegal acts, some of which are still in process and pending decision by the competent authorities.

Next, the judgment analyses whether the challenged law is arbitrary [Art. 9(3) SC], as the appellants claim. This Court can only try the challenged rule, and not carry out a political trial, a value judgment or a technical quality assessment. This means that "an exercise of political realism", tending to investigate the political facts that could explain the intentions of the parliamentarians who voted for the law, cannot be expected from the Court. "In the end, one thing is the purpose of the law and another the ultimate intention of its authors", a question that the Court cannot enter into.

The judgment considers that the challenged law responds to a legitimate, explicit and reasonable purpose. This can be deduced from both the regulatory text and its preamble, which states that the purpose of the amnesty is to reduce the institutional and political tension generated by the events of the "procés" and to facilitate a framework of reconciliation. The legislator aims to contribute to the reconciliation and "normalisation" of the conflict generated by the events of the so-called "procés" and seeks to reduce the "social and political tension" existing in Catalonia with the understanding that this may "worsen in the coming years as legal proceedings are substantiated" linked to these events. It is up to the legislator to assess the circumstances that justify the granting of amnesty, and the Constitutional Court cannot take over this task. The control carried out to assess the constitutionality of the factual requisite that justifies the granting of an amnesty —the existence of an exceptional situation— should be a merely external control, without re-examining the underlying political trial.

In assessing the adequacy of the law to the principle of equality, the Court admits that the LOANCat introduces a differentiation of treatment between formally similar conducts, depending

on whether they have taken place within or outside the context of the "procés", although not to the extent alleged by the appellants. Thus, for instance, it is true that the LOANCat contains a more beneficial treatment for those who have thrown a stone in an act of pro-independence protest compared to those who have carried out the same conduct in an act of protest against an eviction. However, the LOANCat itself also establishes a more favourable or beneficial treatment for the police officer who, in order to prevent the same pro-independence act, commits an act that can be considered an offence by exceeding the exercise of his or her duties. Therefore, the element that the law takes into consideration to establish the difference in treatment is not the ideological purpose pursued—which does not apply to all the individuals who are granted amnesty—but the particular socio-political context in which the conducts covered by the law are framed. The reasonableness of the purpose of contributing to the aforementioned social détente is what justifies this differentiated treatment, thus ruling out the violation of Art. 14 SC.

However, the Court declares Article 1(1) of the law unconstitutional by omission, insofar as it excludes from its scope of application those who, in the same context and period, acted to oppose the Catalan secessionist movement. According to the judgment, such exclusion lacks an objective and reasonable justification, contradicts the purpose of reconciliation pursued by the law and violates the clause of equality before the law. The consequence of this declaration is not the nullity of the provision, but its conforming interpretation, within the meaning that conduct aimed at rejecting the "procés" should also be amnestied, as long as it meets the other legally established requirements.

Likewise, the second paragraph of Article 1(3) of the LOANCat, which allowed the amnesty to be extended to acts initiated before 13 November 2013 but executed after the approval of the aforementioned law, is declared unconstitutional. The Court understands that this extension projects the measure into the future in a way that is incompatible with the very nature of the amnesty, which must refer to past events. In this case, there is no reason to justify a legislative authorisation that could be interpreted as an anticipated authorisation to commit an offence, and therefore, the said subsection is declared null and void.

The Court denies that the LOANCat violates the right to due process since, according to reiterated constitutional case-law, there is no fundamental right to demand the enforcement of a criminal conviction and the contested law preserves the possibility of claiming civil liabilities for damages caused by the amnestied facts.

The judgment rejects the appellants' allegation that the LOANCat constitutes a case of self-amnesty, which would violate Art. 102(3) SC. The judgment states that, in addition to the fact that the appeal of unconstitutionality is not the appropriate channel to determine whether members of the Spanish government will be beneficiaries of the amnesty, "a law debated and approved by the parliament of a democratic State under the rule of law that provides for the extinction of criminal liability by amnesty cannot be qualified as a self-amnesty, typical of authoritarian political systems or States in transition, dictated or authorised by those who benefit from such immunity or by the institutions that have perpetrated such acts or protected their perpetrators, to prevent the investigation and prosecution of conduct constituting the most serious crimes against human rights".

The Court declares that the contested law does not violate the principle of the rule of law [Art. 1(1) SC in conjunction with Art. 2 TEU]. Since this principle integrates others that have already been addressed in the judgment—among them the principle of separation of powers and effective judicial protection—it autonomously analyses whether judicial independence—also an integral principle of that clause—has been violated by the LOANCat. The judgment states that this rule does not violate this principle since it does not impose pressures, instructions or conditions on the jurisdictional function, nor does it alter the statute or organisation of the Judiciary. Likewise, the judgment rejects that the law seeks to censure or reproach the Judiciary, because it does not contain any provision that implies a value judgment on the performance of judicial bodies.

Neither is it considered that the legislative procedure followed for the approval of the contested law has violated the right of political participation of the parliamentarians (Art. 23 SC), as the proposal for legislation was processed in accordance with the provisions set forth in the Constitution and in the Rules of Procedure of the Chambers.

C) Finally, the third part of the judgment addresses the specific challenges to certain provisions of the LOANCat with respect to which none of the allegations of unconstitutionality raised in the appeal are upheld, except with respect to paragraphs 2 and 3 of Art. 13, which are declared not to be unconstitutional as long as the parties involved in the proceedings before the Court of Audit are not excluded from the right to be heard in the specific procedure that they regulate.

The complaint about the amnesty for the leaders of the secessionist process is dismissed as its inclusion is considered reasonable in terms of the reconciling purpose of the law. The argument of indeterminacy of the material scope is also rejected, because Art. 1(1) LOANCat respects the principle of legal certainty and does not contradict Arts. 25(1), 9(3) or 14 SC. The clauses establishing the exclusion of the amnesty (Art. 2), the effects of the amnesty on the criminal liability of the amnestied (Art. 4), the regime of restitution of fines imposed in application of the Organic Law for the Protection of Public Safety [Art. 7(2)], the procedural regime of civil liability [Art. 8(2)], as well as certain rules of a procedural nature applicable to criminal proceedings in which the challenged law is applied, are neither considered to be contrary to the Constitution.

The judgment, in short, reaffirms the validity of its case-law on the limits of legislative power in a State governed by the rule of law, concluding that amnesty is not prohibited by the Constitution and that its adoption, when it responds to an exceptional situation and a legitimate public interest purpose, may be constitutionally admissible.

Justices Ricardo Enríquez, Enrique Arnaldo, Concepción Espejel and César Tolosa have announced the formulation of an individual opinion.

Madrid, 26 June 2025