CONSTITUTIONAL COURT JUDGMENT

The Constitutional Court, in full bench, composed of the Judges Mr. Juan Jose Gonzalez Rivas (President), Ms. Encarnación Roca Trías, Mr. Andrés Ollero Tassara, Mr. Fernando Valdés Dal-Ré, Mr. Santiago Martínez-Vares García, Mr. Juan Antonio Xiol Ríos, Mr. Pedro José González-Trevijano Sánchez, Mr. Alfredo Montoya Melgar, Mr. Ricardo Enríquez Sancho, Mr. Candido Conde-Pumpido Touron and Ms Maria Luisa Balaguer Callejon, has pronounced

IN THE NAME OF THE KING

the following

J U D G M E N T

In the action of unconstitutionality number 4334-2017, lodged by the State Attorney on behalf of the President of the Government against the Law of the Catalonian Parliament 19/2017, of 6 September, so-called "on the self-determination referendum", published at the Catalan Official Gazette no. 7449A, of 6 September 2017. The Congress of Deputies, the Senate and the Catalonian Parliament have been party, but no pleadings have been submitted. The judgment has been drawn up by Judge Mr. Andrés Ollero Tassara, who expresses the opinion of the Court.

II. GROUNDS

1. The President of Government, through this action of unconstitutionality, challenges the Catalonian Parliament Law 19/2017, of 6 September, so-called "on the self-determination referendum". The claim is lodged against the Law in its entirety, being unconstitutional both regarding substantial considerations and on the sphere of competence, as well as concerning procedural defects in which the Parliament of Catalonia had incurred

when processing and passing it. The statements on which both unconstitutional defects rely have been summarized in the Facts of this Judgment; we shall return to this point, but it is now also appropriate to summarize them in brief below.

Firstly, regarding the claim, the Law subject of appeal is a case of absolute unconstitutionality as it regulates a referendum for the eventual independence of the Self-governing Community of Catalonia (Articles 1, 4 and related Articles) based on an alleged sovereignty of people of Catalonia (Article 2) of which the Parliament of the Self-governing Community of Catalonia would act as its representative (Article 3.1). According to this, the Law is referred to as a supreme standard (Article 3.2), placing itself outside constitutional legality. All this directly infringes, among others, Articles 1.2, 2 and 168 of the Spanish Constitution; respectively concerning national sovereignty vested in the Spanish people, the indissoluble unity of the Spanish Nation, together with the recognition and guarantee of the right to self-government of the nationalities and regions of which it is composed, and the total or substantial reform of the Constitution established in the last of the said provisions. Articles 1 and 222 of the Statute of Autonomy of Catalonia (hereinafter, SAC) are also mentioned as violated. In the first article, it is stated that "Catalonia, as a nationality, exercises its self-government constituted as a Self-governing community in accordance with the Constitution and with this Statute, which is its basic institutional act", whilst Article 22 regulates the reform of Titles I and II of the Statute itself.

The claim does also observe that, together with the "total and absolute breach of the established constitutional order", Law 19/2017 falls into unconstitutionality of jurisdictional nature by ignoring the exclusive competence of the State regarding consultative referendum (Article 149.1.32 CE, in conjunction with Articles 81.1 and 92 CE) [Spanish Constitution, hereinafter by its Spanish acronym "CE"], and by trying to submit fundamental questions affecting constitutional order to that type of consultation; those concerned identity and unity of a sovereign entity, which for that same reason could not be channeled but by the reform proceedings set forth in the said Article 168 CE. The reproach of unconstitutionality of the claim are also of procedural nature, since to this effect the State Attorney, in the same terms stated in the Facts, denounces what is called a "simulacrum" of regulatory proceedings followed in the processing of the Law.

All those reproaches of unconstitutionality, which, after being duly summoned by the Court, have neither been challenged by the Parliament nor by the Government of the *Generalitat*, shall be examined in the present Judgment. Some preliminary observations regarding the "exceptional" condition are previously needed, pursuant to the wording (Article 3.1) of the challenged Law. Even more previously, for the sake of a better understanding of the subject-matter of this case, it deems necessary to make a reference to the most prominent contents of this regional Law.

Preceded by a preamble, the substantive part of Law 19/2017 consists of thirty-four Articles, ordered in eight sections, two additional provisions and three final provisions. It is not required at this point to make a specific reference to all the regulations set forth on the "self-determination referendum" (Title III), on the "date and calling of the referendum" (Title IV); on the "electoral campaign" and "guarantees" of the referendum (Title V and VI, respectively), or even on the "electoral administration" (Title VII) or the "complaints, claims and appeals" (Title VIII). For the purposes concerned, it is sufficient with transcribing the first four Articles of the said Law, as well as Article 9.1, the additional provision two and both final provisions thereof. Those provisions contain the core principles of the challenged Law.

After being stated in Article 1 (Title I, headed as "Object") that "This Law governs the holding of a binding self-determination referendum on the independence of Catalonia, whose consequences shall depend upon the given result, and the creation of the Electoral Commission of Catalonia", in the subsequent provisions of the Law (included in Title II, headed "On the sovereignty of Catalonia and its Parliament"), the following is announced;

"Article 2

The people of Catalonia are a sovereign political subject and, as such, exercise their right to freely and democratically decide upon their political condition.

Article 3

1. The Parliament of Catalonia acts as the representative of the sovereignty of the people of Catalonia.

2. This Law establishes an exceptional legal regime aimed at governing and guaranteeing the self-determination referendum of Catalonia. It has hierarchical prevalence over any other regulations that may come into conflict with it, in that it governs the exercising of a fundamental and inalienable right of the people of Catalonia.
3. All and any authorities, natural or legal persons participating directly or indirectly in the preparation, holding and/or implementation of the result of the referendum shall be covered by this Law, which implements the right to self-determination that is part of the current legal system."

It is also worth quoting the first of Articles of Title III, headed "On the self-determination referendum", as well as what Article 9.1 of Title IV provides for.

"Article 4

1. The citizens of Catalonia are called upon to decide on the political future of Catalonia by means of the holding of the referendum, the terms of which are detailed below.
2. The question to be asked in the referendum is:

   'Do you want Catalonia to be an independent state in the form of a republic?'
3. The result of the referendum shall be binding in nature.
4. If the count of votes validly cast gives a result of more affirmative than negative votes, this shall mean the independence of Catalonia. To this end, the Parliament of Catalonia shall, within two days of the proclamation of the results by the Electoral Commission, hold an ordinary session to issue the formal declaration of independence of Catalonia and its effects and resolve upon the commencement of the constituent process.
5. If the counting of votes validly made gives a result of more negative than affirmative votes, it shall mean the immediate calling of elections for the Self-governing Community of Catalonia."

"Article 9

1. The referendum shall be held on Sunday 1 October 2017, pursuant to the Decree on the Calling of the Referendum.
2. (……)"

The following is set forth by the additional provision two:

> "With regard to everything that does not contradict this Law and the Decree of Complementary Rules, Organic Law 2/1980, of 18 January, on the regulations of different forms of referenda, and Organic Law 5/1985, of 19 June, on the general electoral system, shall be applicable on a supplementary basis, interpreted in a manner that is in accordance with this Law."

Finally, it is also worth transcribing the first two final provisions of the Law:

> "One. The provisions of local, Self-governing community and Spanish State law in force in Catalonia at the time of the passing of this Law shall continue to be applicable in every regard that does not contravene it. Pursuant to this Law, the provisions of European Union law, general international law and international treaties shall also continue to be applicable.
>
> Two. Pursuant to the stipulations of Article 3.2, the provisions of this Law shall cease to be applicable upon proclamation of the referendum results, except for the provisions of Article 4 with regard to the implementation of the result."

Concerning the initial settlement of the subject-matter of our ruling, those are the core provisions of the challenged Law, which entered into force the same date of its official publication, namely 6 September 2017; it was suspended the following day by a decision issued by this Court, pursuant to Articles 161.2 CE and 30 LOTC [Organic Law on the Constitutional Court, hereinafter by its Spanish acronym "LOTC"] (Fact no. 2 of the present Judgment). The remaining provisions of Law 19/2017 are of organic or procedural nature and additional to those aforementioned. In the event that those would be declared unconstitutional, as the claim attempts to, those regulations depending on the aforementioned would face the same fate by means of linking or consequence (Art. 39.1 LOTC), given that they are built around a sole premise and do not have any indefinite effect (Articles 1, 3.2 and 4 and additional provision two of Law 19/2017).

Prior to ruling the case as such, some preliminary considerations are required regarding the exceptional nature or condition of Law 19/2017; also are they required concerning the constitutional control that accounts and the order followed by this Court when considering it in respect thereof.

2. Regarding the aforementioned questions, the following must be pointed out:

A. The regional Law 19/2017 is presented as establishing "an exceptional legal regime" with a view to the "self-determination referendum of Catalonia" (Article 3.2). According to the aforementioned provisions, there is no doubt that such demand of exceptionality encourages and gives meaning to the overall legal text which has to be adjudicated by the Court. This demand pinpoints both in the evident disregard of this Law for the constitutional and statutory order, but nevertheless links it to rules of international law, as seen in the additional searching for the alleged grounds or legitimacy of the Law, mainly in its preamble. We do not try at this stage to take a legal decision on this single desire of the challenged Law and its regulatory specifications, but it should be clearly stated that:

a. The "resolute position of disregard for the constitutional order" of this Law (quoting Legal Ground 3 of Constitutional Court Judgment 259/2015, of 2 December, hereinafter CCJ 259/2015) is already reflected in both the anomalous enactment formula and in the preamble.

Regarding the first one, the Law has not been enacted by the President of the *Generalitat*, contrary to what the SAC states: "in the name of the King" (Article 65) and the condition of the former as "the ordinary representative of the State in Catalonia" (Article 67.6.a). This would have made "visible the link by means of which the institutional organization of the Self-governing Communities are linked to the State, of which the King is the symbol of its unity and permanence pursuant to Article 56" (CCJ 5/1987, of 27 January, LG 5). An unusual statement has been called, without precedents, by which it simply gives visibility to passing the Law by the Parliament of Catalonia and being finally ordered (with the habitual formula used) "that all citizens subject to this Law shall cooperate to ensure its compliance, and that it shall be enforced by tribunals and authorities to whom it may correspond."

Concerning the preamble, and leaving aside their calling on the alleged international basis of the said Law, it cannot be omitted the mention, on a legitimate basis, of some decisions taken by the Parliament of Catalonia in respect of the "self-determination referendum", which have been ruled and declared unconstitutional and null and void by this Constitutional Court. Hence, this happens with Resolution 5/X adopting the "Declaration of sovereignty and right to decide of the people of Catalonia" (declared unconstitutional and null, insofar is relevant here, by the CCJ 42/2014, of 25 March); it also happened with Resolution 306/XI, regarding the "General political guidelines of the Government" (declared

null, also insofar is relevant here, by CCJ 24/2017, of 14 February, pursuant to the enforcement of the judgment). Thus, linked with actions taken by some bodies of the *Generalitat*, the regional legislative tries to resolve upon a secessionist "process" from the Spanish State, which has successively resulted in many statements of unconstitutionality carried out by this Court in respect of the so-called "constituent process" in Catalonia [among the most recent, CCJ 90/2017, of 5 July, LG 3.d]).

Both the anomalous formula of indictment and the aforementioned preamble declared what seems to be unequivocal all along the provisions of the Law, where "sovereignty" of people of Catalonia is proclaimed (Article 2), and different from the national sovereignty, which according to the Constitution is vested in the Spanish people (Article 1.2 CE). The Parliament responsible for this Law is also identified as "representative" of such "sovereignty" (Article 3.1), as well as the legal prevalence of Law 19/2017 over any other rule which may contravene it. This last statement is stated in Article 3.2, in the additional provision two and also in the first final provision, which have been already transcribed in the former legal ground.

The alleged prevalence of Law 19/2017 would affect the own Constitution and the SAC. This conclusion is not masked by the references made by the Law itself (arts. 19.2, 22.4, 25, 28.8. 33.2 and additional provisions one and two) to a number of rules of the legal system in force. It is obvious that, once that unconditional prevalence was stated, only the Law in itself would apply those provisions referred to.

That same conclusion can neither be masked by the legal provision declaring the "immediate calling of elections" in the event that the counting of votes validly made in the "self-determination referendum" would give a result of more negative than affirmative votes (Article 4.5). That hypothesis of returning to the constitutional and statutory order would rely, in turn, on the "sovereignty" already exercised through the referendum and, consequently, on the exclusive will declared by a legislative who proclaims to act as the representative of that supreme power (Article 3.1).

Law 19/2017 tries to channel the eventual creation, after the eventual "formal declaration of independence of Catalonia" (Article 4.4), of a legal system absolutely different from the current system relying on the Constitution and the SAC. Thus anticipates, even short-lived its effects may be (Additional provision two), a legal "system" equally

separated and independent from that one valid in Spain, giving rise to an unequivocal continuum. This entails two relevant consequences, which should also be highlighted.

Firstly, this Law does not claim for itself a presumption of constitutionality which generally accompanies any democratic legislative task (for all of them, CCJ 34/2013, of 14 February, LG 9). The autonomous Assembly seeks to act, by issuing it, not as a body established by the SAC, rule whose legal nature relies on the Constitution, but, according to its wording, as "the representative of the sovereignty of the people of Catalonia" (Article 3.1). That presumption could hardly be attained under the Constitution and the SAC.

Secondly, our ruling shall confine itself, in respect of the claim's substantive claims, to assess the legal validity or invalidity of those claims in order to create, in Law 19/2017 and based on it, which has been called some legal "systems" disregarding the overall legal system in force. Had those claims be declared contrary to the Constitution, it would make no sense to examine whether current or hypothetical legal contents of those systems would adapt or not to the fundamental rule. Nothing should be said, contrary to the claim, regarding whether the referendum on "an independent state in the form of a republic" (art. 4.4) contradicts or not Article 1.3 CE ("The political form of the Spanish State is the Parliamentary Monarchy"); neither, because of identical reasons, on whether the organization and functions of the electoral administration created by the Law (specifically, which has been stated in Article 27.2 regarding the exemption of jurisdictional control over their decisions) is adjusted or not to the requirements derived from the fundamental right to obtain effective protection from the judges and the courts (Article 24.1 CE).

b. Law 19/2017 does neither pretend to be based, according to the foregoing, on the Constitution nor on the SAC itself, but it intends to be based on an alleged "right to self-determination" (art. 3.3) so-called "fundamental and inalienable right of the people of Catalonia" (art. 3.2). Those regulatory statements are connected to the invocation, made in the preamble, to certain international treaties of which Spain forms part, where that "right of the peoples to the self-determination" has been recognized "as the first human right"; quoting Articles. 96 and 10.2 CE in respect thereof.

The aforementioned legal provisions are not yet to be adjudicated, however it must be pointed out that the last of them (art. 3.3) manifestly contradicts its own statement, which is only apparently descriptive. In case the alleged "right to self-determination" (of Catalonia) was

"part of the current legal system", as stated in that Law, under no circumstances should it be understood as referred to the current constitutional system, but only to art. 3.3 of Law 19/2017, whose prescription it judges necessary in an auto referential manner.

Even less should those references to international rules made in the preamble be now submitted to jurisdictional control and, allegedly related to them, to others from our Constitution. Preambles of laws are not ordinarily subject to a ruling by this Court (for all, CCJ 104/2015, of 28 May, LG 3), provided that they can bring an interpretative criterion for "seeking the legislative will" (among others, CCJ 170/2016, of 6 October, LG 2). The evidence that, in this matter, the preamble does not give any clue as to the interpretation of unequivocal rules would exclude all consideration thereof, but a significant reason exists to look into it. The explanations stated in the preamble have had reflection on legal provisions subject to the ruling of this Court, and also because the claim argues at length against the fact that the said "right to self-determination" of Catalonia is allegedly based on international rules.

Not any "peoples of Spain", by quoting the preamble to the Constitution, has a "right to self-determination", in the sense that Law 19/2017 recognizes it as a "right" to foster and accomplish its unilateral secession from the State to which Spain is established (art. 1.1 CE). This "right" is obviously "not recognized by the Constitution" [CCJ 42/2014, LG 3.b), and ATC 122/2015, of 7 July, LG 5]. Neither should it be assumed, as stated in the preamble of the challenged Law, that it forms part of our legal system via international treaties to which Spain is party (art. 96 CE). This thesis incurs in the obvious contradiction of pretending that the State sovereignty so as to conclude those alleged commitments would oddly entail its renounce to this same sovereignty; the unconditional supremacy of the Constitution would lead to the nullity and non-application of those hypothetical commitments [arts. 95 CE and 27.2.c) LOTC; DDTC 1/1992, of 1st July, FFJJ 1 and 4, and 1/2004, of 13 December, LG 2; SCCJ 100/2012, of 8 May, LG 7; 26/2014, of 13 February, LG 3; and 215/2014, of 18 December, LG 3.a)]. Apart from this, it is blatantly obvious that the interpretation posed by the preamble to the Law 19/2017, has not even been authorized, but on the contrary, it has emphatically been contradicted by the same international sources to which it resorts to.

It is true that the International Covenant on Civil and Political Rights of 19 December 1966, the Covenant on Economic and Cultural Rights, of the same date, of which Spain is party, and the preamble of Law 19/2017, state that "All peoples have the right of self-determination" (art. 1.1 of both Treaties). It is nevertheless clear that a number of unequivocal decisions issued

by the United Nations, in whose framework those Covenants were signed, have limited that right, which is understood as a desire of unilateral access to the independence in those cases of "alien subjugation, domination and exploitation". Apart from them, "any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations", as stated in no. 1 and 6 of the Declaration on the granting of independence to colonial countries and peoples, adopted by Resolution 1514 (XV) of the General Assembly of United Nations of 14 December 1960.

Even more precise is the Declaration 50/6 of the United Nations, whose third paragraph of Section one states the following: "Continue to reaffirm the right of self-determination of all peoples, taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, and recognize the right of peoples to take legitimate action in accordance with the Charter of the United Nations to realize their inalienable right of self-determination. This shall not be construed as authorizing or encouraging any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind"

It is obvious that such participation, under the Constitution, the Statute of Autonomy and the overall of the legal system, is enjoyed by every Spaniard who benefits from the political status of being Catalan (art. 7 SAC) or, in other words, the Catalan peoples as a whole, as the Constitution notes in its preamble when referring to "peoples of Spain".

The aforementioned is enough to exclude all supposed grounds on international right invoked in the preamble of Law 19/2017 to the "self-determination" of Catalonia. Those referrals advocate the legal impossibility that the Constitution itself would, in its core, be inapplicable or shifted in view of those international commitments. Notwithstanding that those commitments do not, in any way, exist within the scope or the intended content. It is worth recalling that concern for "national identity", for "political and constitutional fundamental structures" and for "territorial integrity" of Member Estates are principles expressly set forth, with the highest rank, under European law (art. 4.2 of the Treaty on European Union).

B) The challenged Law provides for itself the so-called period of validity subject to an expiry date. As established in its final provision two "pursuant to the stipulations of Article 3.2,

the provisions of this Law shall cease to be applicable upon proclamation of the referendum results, except for the provisions of Article 4 with regard to the implementation of the result"

Such restriction to the validity of those rules should not hinder its current ruling, given that Law 19/2017 is still in force –even though its effects have been suspended– when this tribunal is deliberating and deciding on its constitutionality.

The legal period established for such loss of legal force has been fixed with regard to the "implementation of the result" called on 1 October 2017 (art. 9.1), so that the said referendum can neither be seen as legally held, nor therefore that condition could be verified, given the suspension of the Law 19/2017 pursuant arts. 161.2 CE and 30 LOTC, by an order issued on 7 September 2017 (Fact 2 of the present Judgment). This suspension was followed by many others that, based on identical constitutional and legal grounds, affected to a number of acts and provisions adopted by enforcing the challenged Law: orders issued on the same date that the former one, concerning the challenged autonomous provisions 4332-2017, 4333-2017 and 4335-2017. By way of those orders, also the Resolution 807/XI, of the Parliament of Catalonia, appointing the members of the so-called Electoral Board of Catalonia, the Decree 140/2017, of 7 September, on the complementary regulations for carrying out the Catalan Self-determination Referendum, and finally the Decree 139/2017, of 6 September, of the *Generalitat* of Catalonia, on calling the reiterated referendum, were respectively suspended.

Even beyond the aforementioned –enough for clarifying any doubt on the validity of Law 19/2017, for the purpose of its constitutional ruling–, it is also necessary to consider that the same Law excludes its art. 4 "in regards as the implementation of the results" from that alleged loss of validity. This refers to sections 4 and 5 of said Article, by which the Law considers either the "independence of Catalonia", or "the immediate calling of elections for the Self-governing Community of Catalonia", depending on the results of the supposed "self-determination referendum". It is regulated and called by considering Catalonia a "sovereign political subject" according to a precept (art. 2) that, even not being in force, should be implicitly and unambiguously included, as a final ground, on those statements of art. 4 carrying out what the autonomous legislative consider the "implementation" of the result of the said consultation.

At this point, it is possible, according to the aforementioned clarifications, to get into the constitutional ruling of Law 19/2017. As followed in a number of occasions when, as in present proceedings, some autonomous laws have been challenged due to jurisdictional, substantial and procedural reasons (i.e. CCJ 103/2008, of 11 September), our assessment shall follow the same order, although the claim's methodical account shall be slightly altered.

3. In this ground, we contemplate the alleged unconstitutionality of the challenged Law for being vitiated by a lack of competence, as claimed in the claim, having disregarded the exclusive State competences in respect of popular consultations via referendum.

Those competences cover, according to a well-established case-law of the Court, not only the authorization of those consultations (art. 149.1.32 CE), but also the establishment and regulation therewith. The institution of a referendum is a channel to the direct participation of citizens in public affairs, participation of political nature which is considered a fundamental right (art. 23.1 CE) whose implementation is solely subject to an organic law (art. 81.1 CE) and, more specifically, the one set forth in art. 92.3 CE in order to regulate "the terms and procedures for the different kinds of referendum provided for in this Constitution". As established by the said constitutional rules, governing the establishment of a referendum is the sole prerogative of the State "regardless of the modality or territorial scope within it is projected" [CCJ 31/2015, of 25 February, LG 6.A)], notwithstanding those caveats set forth in our case-law concerning the eventual additional interference granted to Self-governing Communities [CCJ 51/2017, of 10 May, LG 6.a)].

Which is more relevant for the present proceedings is to recall two unequivocal statements of our case-law in this field. Although the specific scenarios for a referendum anticipated by the constituent do not exhaust the scope of few other admissible in our legal system, the generic or abstract provision of those referendums different to those expressly contemplated in the fundamental rule shall solely be adopted by the organic law to which art. 92.3 CE relates. The second statement, especially relevant for the present claim, is that fundamental questions already resolved in the constituent process and subtracted from the decision of the established power cannot be subject to autonomous popular consultations - whether by referenda or otherwise [CCJ 51/2017, LG 5 c) and d), quoting former judgments]. Thus, redefining the identity and unity of the holder of sovereignty is a matter that has to be channeled through the proceedings of reform set forth in 168 CE, via referendum of constitutional amendment (CCJ 90/2017, LG 6, also quoting former judgments by this Tribunal), since a Self-governing Community cannot call a referendum which exceeds the framework of its own powers or even insists on fundamental issues already resolved by the constituent process or removed from the decision of established powers (LG 4 CCJ 103/2008 and LG 3 CCJ 138/2015).

It is then obvious that Law 19/2017 has been enacted without any supporting powers and thus it is unconstitutional as a whole, since the overall law has been based on the regulation

and calling a singular referendum which exceeds the statutory powers of the Self-governing Community.

A referendum has been then called without the required authorization from the State (art. 149.1.32 CE). Besides, this specific type of consultation is neither set forth in the Constitution nor in the organic law to which Article 92.3 CE relates (currently, Organic Law 2/1980, of 18 January), without Article 122 SAC being able to provide any ground for its regulation under the aforementioned constitutional case-law; provision that the challenged Law, apparently based on the "sovereignty" of Catalonia, refrains from invoking [on the scope and limits of the former statutory rule, see the aforementioned SCCJ 51/2017 and 90/2017, FFJJ 6.a) and 7.B), respectively]. It should also be noted, which is of higher relevance, that the consultation on the "self-determination" of Catalonia should absolutely affect the aforementioned identity and unity of the holder of sovereignty and, therefore, according to our case-law, it could not be subjected to a different kind of referendum that the provided for in art. 168.3 CE, with the involvement of the whole Spanish electorate.

Once the lack of competence addressed by the claim against the Law 19/2017 has been laid down, let us consider the material or substantial grounds hereinafter.

4. The present claim has been lodged in order to uphold the national sovereignty that is vested in the Spanish people (art. 1.2 CE) and the indissoluble unity of the Spanish nation, basis for a Constitution that both recognizes and safeguards the right to self-government of the nationalities and regions of which it is composed and the solidarity among them all (art. 2 CE). The challenged Law, as stated by the claim, would amount to a "complete and absolute break" with those essential principles of our legal system inasmuch as it confers the condition of "sovereign political subject" to the people of Catalonia (art. 2), "sovereignty" of which the Parliament of Catalonia acts as a "representative" (art. 3.1), regulating and calling "a binding self-determination referendum on the independence of Catalonia" (arts. 1 and 4). It is claimed that such provisions have "hierarchical prevalence", as the overall Law, "over any other regulations that may come into conflict with it" (art. 3.2, in conjunction with additional provision two and final provision one).

The "flagrant and severe violation of our constitutional system", according to the claim, would also result from the infringement, by the Law 19/2017, of art. 1.3 and 168 CE, respectively referred to the parliamentary monarchy as a political form of the Spanish State and the proceedings for the total or partial revision of the Constitution (namely, Preliminary Title, Chapter II, Section 1ª, or the Title I or Title II); provisions which, in a different section of the

claim, are quoted together with art. 9.1 CE, according to which "citizens and public authorities are bound by the Constitution and all other legal provisions".

Hereinafter, the Court will examine both grounds of unconstitutionality, with two previous clarifications. Firstly, once the pretension of Law 19/2017 to become a channel to institute a "system" outside the Constitution has been established, the former should be judged, not the future contents of the sponsored "system". Consequently, the "independent state in the form of a republic" of Catalonia submitted to a referendum (art. 4.2) is now under consideration in contrast with art. 1.3 CE. Secondly, our ruling may be ground on any constitutional provision, regardless of whether they have been invoked or not during the proceedings (art. 39.2 LOTC).

5. There is no doubt that Law 19/2017 is unconstitutional on the whole by explicitly going against those essential principles of our constitutional system: national sovereignty vested in the Spanish people, the unity itself of the nation established as a social and democratic State, and the supremacy of the Constitution, to which all public authorities are bound, and hence also the Parliament of Catalonia (arts. 1.2, 2, 1.1 and 9.1 CE).

Now, it is a matter of a "constitutional violation which is not, as is usually the case with contraventions of our fundamental statute, the result of a misunderstanding of what the Constitution enforces or allows in a given circumstance, but rather the result of an outright rejection of the binding power of the Constitution itself, which has been expressly set at odds with a power claiming to hold ("representative", quoting art. 3.1 of the Law) sovereignty and to constitute the expression of a constituent dimension from which a blatant repudiation of the current constitutional system has taken place. This is an affirmation by an authority with pretensions of founding a new political order, and for that very reason, of being released from all legal ties" (CCJ 259/2015, LG 6; on similar terms, ATC 141/2016, of 19 July, LG 3).

Constitutional principles so forthrightly opposed are indissolubly linked, as the Court already stated in CCJ 259/2015. The Constitution's preeminence as the supreme statute (CCJ 54/1983, of 21 June, LG 2, and, even earlier in CCJ 16/1982, of 28 April, LG 1), expressly set forth in Article 9.1 CE, relates to the fact that the Constitution itself is the result of its creation as a sovereign nation by way of a single entity, the Spanish people, to whom national sovereignty belongs and from whom all State powers emanate. It should also be pointed out that the national sovereignty, vested in the Spanish people, necessarily entails the unity of the nation (art. 2 CE), whereby the nation itself is formed, at the same time, in a social and democratic State. A sole and common State for everyone and in the whole territory, regardless of its complex, compound unit by virtue of constitutional recognition of territorial autonomies,

thus being Article 1.2 CE the basis of our entire legal system [CCJ 259/2015, LG 4.a); on similar terms, CCJ 90/2017, LG 6.a)].

The foregoing has been openly opposed by the Law subject to this claim:

A) It firstly opposes the preeminence of the Constitution. Not any established power should seek to surpass the fundamental rule, as the Parliament of Catalonia has stated on its own volition in an "open and explicit challenge to the binding force of the Constitution or the legal system grounded upon it" (CCJ 128/2016, of 7 July, LG 5). It means nothing more when this Law advocates its "hierarchical prevalence over any other regulations that may come into conflict" with it (art. 3.2). Consequently, such provision decides at its discretion whether to be applied or not to the State organic laws (additional provision two) or even, generally speaking, to any other State, autonomous or local rules, also exceeding the European Union law, the international law and international treaties, depending on whether they oppose or not to the said provisions. Spanish State rules –as stated by the final provision one of this Law– "shall continue to be applicable in every regard that does not contravene it." (sic), while the provisions of the European Union and international law should apply "pursuant to this Law".

It is obvious how the autonomous legislative has forgotten "the permanent difference between the objectivity of the constituent power formalized in the Constitution and the action taken by constituent powers, whom could never surpass those limits and powers set forth by the former" [CCJ 76/1983, of 5 august, LG 4; on similar terms, CCJ 15/2000, of 20 January, LG 3, and 247/2007, of 12 December, LG 8.a)]. It is hardly needed to point out that, once the binding force of the Constitution has been disregarded, the conformity with the SAC at issue has also been ignored (art. 147.1 CE), which is the immediate base of the powers of Parliament adopted by this law. The self-government of Catalonia, formed as a Self-governing Community, cannot be carried out, in effect, but "in accordance with the Constitution and with this Statute, which is its basic institutional act", and the powers of the *Generalitat*, "emanating from the people of Catalonia", should also be consequently exercised, "in accordance with this Statute and with the Constitution" (arts. 1 and 2.4 SAC). "Self-government –in sum– is not sovereignty" (CCJ 4/1981, of 2 February, LG 3, and many other further judgments on similar terms).

B) Contrary to what has been just recalled, the supremacy that this Law advocates for itself, with the subsequent subversion of the system of sources of law, comes from the statement made in its art. 2, according to which, and openly inconsistent with art. 1.2 CE, "the people of Catalonia are a sovereign political subject and, as such, exercise their right to freely and democratically decide upon their political condition"; a "sovereignty" which proclaims itself to

be “representative” of the same autonomous assembly which has issued this Law (art. 3.1). But neither the people of Catalonia “hold a sovereign power, which exclusively belongs to the Spanish nation in the form of a State”, nor should, consequently, be identified as a “legal entity which is in competition with the holder of the national sovereignty”; neither the citizens of Catalonia should “be confused with the sovereign people construed as «the ideal unity of allocation of the constituent power and as such source of the Constitution and legal system»” [CCJ 90/2017, LG 6.a), with reference to similar former judgments].

It is also worth recalling, contrary to what has been stated in the preamble of the challenged Law concerning the “breach of the Spanish constitutional pact of 1978”, that “the Constitution is not, therefore, presented as the result of an agreement between historical territorial institutions which retain certain rights that predate the Constitution and superior to it, but rather a legal text which imposes with binding force within its scope” (CCJ 76/1988, of 26 April, LG 3, and on similar terms SCCJ 42/2014, LG 3, 259/2015, LG 4.b), and 90/2017, LG 6). If “as a social, historic reality, Catalonia (and Spain as a whole) existed prior to the 1978 Constitution” “from a legal, constitutional point of view, the “people of Catalonia » (....) include a subject that is however constituted in legal terms by virtue of a constitutional recognition (in the same way as it happens with the “Spanish People” as a whole, “from whom all State powers emanate”, pursuant to art. 1.2 CE” (CCJ 42/2014, LG 3).

C) The “binding self-determination referendum” regulated and called by Law 19/2017 (arts. 1 and 4 and related) is as consistent with the unconstitutional assumption that “sovereignty” of people of Catalonia from which it departs as irreconcilable with the unity of the Spanish nation in which the Constitution is grounded (art. 2 CE). Had this consultation be upheld under the terms provided, such unity would have been legally aggravated. Even though the counting of votes validly made would have not implied the “independence of Catalonia” (art. 4.4) that unity of the Nation, and the State in which it has been established (art. 1.1 CE), it would have hopelessly been cancelled. The nation in whose unity the Constitution is based is that of the overall of Spaniards, free and equals in rights. They are solely those who, hypothetically, could be called upon to decide on the permanence and fate of the common State (art. 168 CE), and the constituent power of which they are sole holders would even not deserve that name in the event that such decision would be only recognized to a portion of the Spanish people, as claimed by Law 19/2017. Which affects to all, that is, the permanence of that common State in which Spain was stablished, should, where appropriate, only be amended and decided by all of them [CCJ 90/2017, LG 6.a)]; the

opposite would imply, by breaking the unity of citizens, the collapse of the nation as a whole from a legal and constitutional point of view

The provisions of the Constitution (and also, therefore, its art. 2) are, without exception, subject to reconsideration and revision according to law. The Court, thus, reiterates that "does not claim that its provisions are set in stone, but rather permits its full revision" (art. 168 CE and CCJ 48/2003, of 12 March, LG 7)". It guarantees that "only the citizens, acting necessarily on the completion of the reform process, can hold supreme power; in other words, the power to modify the Constitution without restrictions" (CCJ 103/2008, of 11 September, LG 2). Each and every constitutional statement is subject to amendment, but in that case it is necessary that "the attempt to achieve this" shall be "effectively performed within the procedural framework for constitutional reform, since concern for these procedures is always mandatory" (CCJ 138/2015, of 11 June, LG 4, and the case-law cited). The openness for the formal amendment of the fundamental rule is complete, which, among others, may be requested or proposed by the Assemblies of Self-governing Communities (arts. 87.2 and 166 CE). This gives the most ample freedom to public exposition and defense of any ideological conceptions, included those that "seek to have a certain group recognized as a national community, even when this is the basis for attempting to form a constitutionally legitimized intent—through the corresponding, unavoidable reform of the Constitution— to translate this notion into a legal reality" (CCJ 31/2010, of 28 June, LG 12). A public debate that, whether inside or outside the institutions, regarding those political projects or any other advocating constitutional reform, enjoys, precisely under the protection of the Constitution itself, an unconditional freedom. However, converting these projects into rules or other manifestations of the public power is only possible through the procedure for constitutional reform. To do otherwise would be to release the public authorities from any requirement to obey the law, irreparably damaging citizens' freedoms" [CCJ 259/2015, LG 7; on similar terms, SCCJ 122/1983, of 16 December, LG 5; 52/2017, LG 5; and 90/2017, LG 6.b)]. This last is, nevertheless, what the Parliament of Catalonia has carried out by passing the challenged Law.

D) The "structural principles of legal system" (CCJ 128/2016, LG 5) are indivisible requirements and the confirmed infringement of provisions set forth in arts. 1.2 and 2 CE is also inseparably bound up with those that shape our State as a "democratic" and "subject to the rule of law" State (art. 1.1 CE).

By passing Law 19/2017, the Parliament of Catalonia has stood up against the national sovereignty falling to the Spanish people, calling a portion of that people by

challenging the unity of the Nation, to decide the fate of the common State (arts. 1.2 and 2 CE), while attempting to "ignore the current institutional position, according to the system in force, of the Self-governing Community" [CCJ 52/2017, LG 8.A)], with the corresponding violation, therefore, of the constitutional principle of self-government (art. 2 CE) and the core of the Statute of Catalonia itself (arts. 1 and 2 SAC), thus undermining its immediate source of authority.

This breach of the Constitution and the full disregard in which the Chamber has incurred of the constitutional loyalty which obliges everyone (among other, SCCJ 181/1988, of 13 October, LG 4, and 9/2017, of 19 January, LG 3), have attempted, at the same time, against the existence of the Spanish State –where the Community of Catalonia is included- as a social and democratic State subject to the constitutional principles set out in art. 1.1 CE, which at the same time are common values to the European Union Member States on which the Union is founded (art. 2 of the Treaty on European Union).

The Parliament of Catalonia has purported, by means of the Law 19/2017, to cancel *de facto*, within the territory of Catalonia and to Catalan people as a whole, the validity of the Constitution, of the Statute of Autonomy and any rules of law that would not adjust or adapt to the dictates of its invalid will. This is what predicates the apodictic statement both as a representative of a "sovereignty" which is a non-existent law and as a hierarchical supremacy of rules issued at its own discretion (art. 3). The Chamber has remained entirely on the fringes of the rule of law, has come into an unacceptable *de facto* route (SCCJ 103/2008, LG 4, and 259/2015, LG 7, and ATC 24/2017, LG 9), has openly ceased to act in the performance of its own constitutional and statutory actions and has placed at greater risk, for all the citizens of Catalonia, the validity and effectiveness of any safeguards and rights provided by the Constitution and the State to all of them. Thus, citizens have been left to the mercy of a power which does not recognize any limit whatsoever. They have drastically refused, by means of the proclaimed "exceptional legal regime" (art. 3.2), unavoidable requirements of the rule of law, whose guarantee and dignity rely on the assurance that their rulers are servants, not owners of the law, and first and foremost of the Constitution and of the rules emanating from it which govern those proceedings to its own and unlimited formal amendment; therefore, one cannot speak of political and social freedom if those requirements are not fulfilled.

Nonetheless, by giving up –as stated in Ground 2 of this judgment- any presumption of constitutionality, the autonomous assembly is not entitled to legitimately claim obedience to this Law. A power which expressly refuses the law, also denies itself the possibility to be

an authority worthy of observance. Such a serious attack to the rule of law overly violates, with similar intensity, the democratic principle, having the Parliament disregarded that subordination to the Constitution is another form of submission to the will of the people, expressed this time as a constituent power which belongs to the Spanish people, not to a single piece of it. In the constitutional State, the principle of democracy cannot be detached from the unconditional supremacy of the Constitution [CCJ 259/2015, LG 4.b)]; which neither consents to any constituted power to adopt some decisions intended irreversible or without return for the political community. The reversibility of policy choices is, precisely, consistent with democracy [SCCJ 31/2010, LG 6; 163/2012, of 20 September, LG 9; 224/2012, of 29 November, LG 11; and 259/2015, LG 5.b)].

The preamble to the Law 19/2017 points out that, through it, "the democratic mandate arising from the elections of 27 September 2015" is accomplished, whereby the Parliament of Catalonia expresses the majority mandate from the people of Catalonia". But the "mandate from the people" —from Spaniards as a whole or from Catalan people—, is only identifiable and available, at the risk of counterfeiting, by means of law, in accordance with in each case may be raised before the corresponding electoral bodies, always according to the Constitution and the remaining legal system (CCJ 31/2015, of 25 February, LG 5).

Finally, Law 19/2017 does not only incur in the aforementioned lack of jurisdiction (Ground 3). It is also unconstitutional, in her highest severity, due to the said legal reasons of material order, which now requires annulling the legal appearance (CCJ 259/2015, LG 7) which, being issued by an authority about which there are no legitimate doubts at source, this Law, despite its exorbitant provisions, could have displayed before the citizens.

6. The former violations of the constitutional sections (in terms of powers and subject-matter) are not the only violations that this claim attributes to Law 19/2017; in the claim, it is only argued a first plea of a formal nature", based on the called "simulacrum" of parliamentary procedures followed in the processing and final adoption in the meeting of the Parliament of Catalonia held on 6 September 2017. A processing –according to the claim-, carried out in a 11-hour session "through" art. 81.3 of the Rules of Procedure of the Parliament of Catalonia (hereinafter, RPC) and at which both the deputies' right of access to the documentation forty-eight hours prior to the meeting for debating and voting (art. 82 RPC) and the request for an opinion from the Council for Statutory Guarantees was disregarded; besides, they failed to admit overall amendments on the bill that originated the challenged law, and only two hours to submit partial amendments were granted. All of which, according to the State Attorney, would amount to "force the regulation and

parliamentary procedures in order to pass and publish the law as a matter of urgency, with a parliamentary procedure that can only be described as absolutely totalitarian".

In this ground, we will examine those violations of procedural unconstitutionality hence formulated, even though, however, two points must be raised. Firstly, which the Court has to rule is whether the parliamentary processing of the challenged Law incurred or not in an invalid procedural defect, standing aside and regardless, therefore, of what has been already confirmed in respect of the non-compliance by the Parliament of Catalonia of former rulings issued by this court. Those prevented, by material or fundamental reasons, to declare admissible and subsequently pass a bill as the one which currently is subject to appeal. The ATC 123/2017, of 19 September, confirmed such lack of compliance with CCJ 259/2015 and subsequent decisions issued by this Court, and as a consequence, in compliance with arts. 87.1 and 92 LOTC, the agreement reached by the *Mesa* (Bureau) of the Parliament admitting the processing of the bill for the self-determination referendum by means of an extraordinary urgency procedure as well as the agreement reached by the *Mesa* itself, rejecting to reassess such decision, were declared null and void; and also the Chamber's agreements by which the debate and voting of the aforementioned bill were included on the agenda on 6 September 2017 and the essential processing of the legislative procedure were abolished. Secondly, it is worth recalling at this point that the Court may ground the declaration of unconstitutionality on the violation of any constitutional provision, regardless of whether it was invoked during the proceedings (art. 39.2 LOTC).

A) The claim submits, according to the outlined claims, that the parliamentary passing that followed to the legislative initiative that resulted in the Law 19/2017 was irregular to the extent of reaching the unconstitutionality of the latter thereof.

It is then necessary to recall that the well-established doctrine of the Court on how the non-observance of provisions which regulate the legislative proceedings could amount to the unconstitutionality of the law when, substantially, the process of shaping the will within the Chambers is altered; those rules of proceedings are unaffected by the action of the legislative and have, above all, an instrumental nature in regards to political pluralism which is, pursuant to art. 1.1 CE, a higher value of the legal system in general [all decisions in this vein, SCCJ 99/1987, of 11 June, LG 1.a); 103/2008, LG 5; 176/2011, of 8 November, LG 4; 84/2015, of 30 April, LG 4; 185/2016, of 3 November, LG 5.b); 213/2016, of 15 December, LG 3; and 215/2016, of 15 December, LG 5.b)].

To preserve the political pluralism along the legislative proceedings is inherent to the respect to the position and rights of minorities (for all, CCJ 136/2011, of 13 September, LG

8) and to the own integrity of rights of representatives to exercise, in equal conditions and under regulations, its own functions; rights whereby the fundamental right of all citizens to participate in public affairs through representatives (art. 23.1 CE) is at the same time carried out. Those fundamental rights, closely linked to each other, could be breached in the event that the regulation of the Chambers, or other rules governing parliamentary procedures, which had affected the essence of the functions performed by politicians, essence to which the performance of legislative function obviously belongs (for all, SCCJ 38/1999, of 22 march, LG 2; 27/2000, of 31 January, LG 4 and 57/2011, of 3 May, LG 2), would have been violated.

B) It is therefore necessary to look back at those parliamentary actions developed in the Parliament of Catalonia on 6 September 2017 regarding the bill on "the self-determination referendum", presented then by two parliamentary groups which exceeded, conjoined its corresponding members, an absolute majority of the Chamber.

This legislative initiative was admitted by the *Mesa* of the Parliament [art. 37.1.d) RPC] at 09.00 h, of the said date 6, being immediately disseminated (Official Gazette of the Parliament of Catalonia, XI Legislature, no. 500, of 6 September 2017) and thereupon being followed by a meeting in Plenary Session, previously called (Session's record of the Parliament of Catalonia, XI Legislature, Series P, no. 80, dated 6 September 2017). Once the session was opened, the spokesperson of one of the parliamentary groups who signed the bill requested that, by altering the agenda, the same would be included as a "new point" for debating and voting, removing all the procedure processing (included the request for the opinion by the Council for Statutory Guarantees), except for the debate and final vote; in this same procedure, it was suggested to open a 2-hour period for amendments, under —it was said— art. 81.3 RPC (provision by which "the Plenary's agenda may be altered, if thus agreed, at the President's proposal or by the request of two parliamentary groups or one-fifth of its members, and also as required by law. Had an issue be included, it must comply regulatory proceedings allowing them, unless otherwise specifically agreed, by an absolute majority").

The spokesperson of another parliamentary group signatory of the bill took then the floor with an identical-sounding requirement and quoting equal regulations; then both spokesperson and deputies of the remaining groups took also the floor to criticize the supposed enforcing of art. 81.3 RPC. They referred, subsequently, to the request for review submitted against the admittance of the bill (art. 38.1 RPC), to the need for respect of the provisions of art. 82 RPC (according to which, as relevant here, "a debate cannot begin if

two days before that debate, at least, the report, opinion or documents on which the debate is based have not been circulated, as otherwise agreed by the *Mesa* or the Committee in the reverse direction") and to the inability to abolish the right to request an opinion from the Council for Statutory Guarantees on the compliance of Law 2/2009, of 12 February, on the Council for Statutory Guarantees, with the Statute of Autonomy and with the Constitution [arts. 76.2.b) SAC, 16.1.b) and related, and 120 RPC].

Following some interruptions of the Plenary with a view to resolve, but not admitting, the proposed reviews, the President submitted for voting to the Plenary, by invoking art. 81.3 RPC, the inclusion in the agenda of the debate and voting of the bill "on the self-determination referendum", which was approved by a majority, not without new objections raised from representatives opposed to this bill and that type of processing. The President then exposed the delisting and exemption or "any processing" apart from the qualification and admittance (already carried out, she found), the publication of the bill, the processing of amendments (which shall be carried out, she noted), the debate and, finally, the voting, specifically noting that what referred to the Council for Statutory Guarantees was also excluded, "as it has been requested by the spokesperson". The Plenary approved it, in a new voting, by a majority. A 2-hour period was then opened in order to submit partial amendments, thus excluding the opportunity to submit amendments to the overall, which raised once again the critical intervention of speakers and deputies, by invoking the RPC and new requests for review, which were also rejected.

When the Plenary session resumed, complaints by deputies were once again raised against the *Mesa*'s denial to process those requests for the opinion of the Council for Statutory Guarantees, the President replying that the Plenary had voted the delisting of such "proceedings" and thus announcing the submission of new requests for review. Following different interventions, the President wound up the debate and called for voting, and then the deputies members of Parliamentary Groups *Ciudadanos, Socialista* and *Partido Popular de Cataluña* left the Chamber. After voting the partial amendments (only those submitted by a non-assigned deputy and by the parliamentary groups signatories of the bill were approved) they finally proceed to voting and final passing of the bill "of the self-determination referendum".

In view of the foregoing, it can be addressed what the claim argues regarding unconstitutionality of the challenged Law due to the defects of proceedings which could have affected its processing and passing. It is appropriate then to separately discern and examine the eventual infringements of the RPC and those relating to the claimed deprivation

or abolition of the deputies' right to request the opinion by the Council for Statutory Guarantees; not only provided for and regulated in the same RPC, but in provisions of the SAC and the Autonomous Law 2/2009, on the regulation of the said advisory body.

C) Concerning the claimed infringements, direct or immediate, of the Rules of Procedure, the claim condemns that both the debate and voting of the bill was imposed immediately before to its official release (namely, the morning of 6 September) and without observing therefore the requirement to disclose, at least two days in advance, the "documents" which supported the parliamentary debate (art. 82 RPC). It also condemns the exclusion of overall amendments and criticizes the granting of only a two-hour period to submit partial amendments; all those measures, together with the right to request an opinion from the Council for Statutory Guarantees, would have distorted the legislative procedure (which became a "simulacrum") and "forced" the Rules of the Procedure.

It is true, as an initial assessment, that with these decisions the possibilities to intervene for the remaining deputies and groups were dramatically reduced by the majority of the assembly. It is worth recalling that the right to amendment, although regulatory in nature, is connected with that of fundamental nature regarding the representatives' right to exercise their functions guaranteed by art. 23.2 CE (CCJ 119/2011, of 5 July, LG 9); a right that also provides, generally speaking, that representatives have "equal conditions to accede to the knowledge of issues", without thus being deprived of "the time necessary to proceed to a detailed study" of them (SCCJ 163/1991, of 18 July, LG 3, and 30/1993, of 25 January, LG 4, in some cases which affected to non-parliamentary representatives, but fully applicable to legislative assemblies). Nevertheless, shortening the time-limit and reducing the period for parliamentary actions not always results in a violation, and, least of all, with constitutional significance; parliamentary regulations may foresee it (in theory, it is provided for in article 82 RPC and through the urgent procedure of art. 105 RPC), and bodies of the Chambers may proportionally and reasonably apply both exceptional provisions (SCCJ 238/2012, of 13 December, LG 5; 129/2013, of 4 June, LG 10; 143/2016, of 19 September, FFJJ 3 et seq.; 185/2016, of 3 November, LG 5; and 215/2016, LG 5, among others; also, AATC 35/2001, of 23 February, LG 4, and 9/2012, de 13 January, LG 4).

It should also be recalled that regulating the representative's power to amend also corresponds to parliamentary regulations, and not any constitutional principle is recognized whatsoever imposing that every legislative procedure should automatically include a processing in order to submit overall amendments. However, which is now pertinent are not the particular regulatory violations furnished by the claim, but an essential infringement,

appropriately qualified as absolute or severe, of the legislative procedure regulated by the RPC.

The bill which resulted in the challenged Law was processed and passed, in effect, aside of any of the legislative procedures envisaged in the RPC, and following an absolutely incorrect way (art. 81.3 RPC). The majority used it in order to improvise and articulate ad hoc an unusual channel during which the possibilities to intervene and the rights of the remaining groups and deputies were at that majority's own discretion. RPC regulates legislative procedure in its Chapter II and conducts a "common legislative procedure" (second section) and some "special legislative procedure" (third section), on the drafts and bills that basically develop the Statute of Autonomy itself, on the delegation of full powers to Committees, on the processing of legislative initiatives in one single reading and, finally, on the called "proceedings for strengthening the applicable law" (SCCJ 224/2016 and 225/2016, both dated 19 December, LG 3 on both). Apart from those aforementioned, the RPC does not contain any other proceedings to legislate, and it is evident that the bill which resulted in Law 19/2017 was not channeled through any of them.

Which the majority imposed, fostered by the *Mesa* and the President of the Assembly, was the creation of an uncommon ad hoc "proceedings", apparently similar to that of the single reading provided for in the RPC (whose art. 135.2, concerning that kind of proceedings, was and is still suspended by a decision issued by this Court of 31 July 2017, unconstitutionality appeal no. 4062/2017). All this raised and achieved an unique and arbitrary repeal of regulatory rules aiming at regulating the legal system, as well as an obvious infringement of specific provisions of RPC intended for its own amendment (final provision one and its referral to arts. 126 and 127); those last provisions guarantee, first and foremost, the rights of parliamentary minorities (see, SCCJ 44/1995, of 13 February, LG 3, and 226 and 227/2004, both dated 29 November, LG 2 from both).

The majority of the Chamber tried to be covered by art. 81.3 RPC, but it is obvious that this regulatory provision does not consent to this kind of procedure. That rule sets forth that the Plenary's agenda might be altered if it is so agreed by two parliamentary groups, adding that "had an issue be included, it must comply regulatory proceedings which allows for it, unless otherwise specifically agreed, by an absolute majority". This general provision (analogous, but with some major differences, to some others included in different regulations of the autonomous assemblies and in the own Regulation of the Congress of Deputies: art. 67.4) is provided for in the Title IV of the RPC ("On the functioning of the Parliament"), thus aside to the regulation of legislative proceedings.

Even in the doubtful event that the said rule could be applied to include in the Plenary's agenda, with the purpose to be decided upon, an issue whose prior legislative processing was still unfinished, it is obvious that to this end the legislative proceedings should have commenced and been in progress, through any of the ways provided for as *numerus clausus* in the RPC. Only then, when proceedings (the "common" or the special ones) have been instituted and are operational, would the proceedings carried out and those still pending also be identifiable, as well as whether the latter should be omitted or excluded on good grounds in order to include the issue in the Plenary's agenda; possibility that by no means can be regarded as unlimited, but those parliamentary proceedings being, generally speaking, a safeguard of the rights of representatives and, specifically, of minorities.

What has by no means been authorized by art. 81.3 RPC to that majority is to create *extra ordinem* legislative "proceedings" on its own criterion; it would lead to the irrational and unbearable conclusion under the rule of law that each and every proceeding effectively provided for and regulated in the RPC would be merely of operational and exchangeable nature, through the free decision of the said majority. However, it was herein so understood by the Plenary of the Parliament of Catalonia, when it resorted to altering the agenda when the legislative initiative, freshly admitted by the *Mesa*, had not even started its procedural path in one or another of the procedural methods available in the regulation, and without being aware of the specific processing that could be followed and, from it, of those which perchance could be ignored.

Therefore, under the alleged protection of a rule intended for the exceptional modification of the agenda, the majority, in the end, innovated the own RPC and arbitrated for the case not the mere abolition, as stated by their speakers, of one or another procedural processing, but unprecedented "proceedings", designed and executed at their convenience. At this point, it is rather understandable that the most serious thing, from the constitutional point of view, is not the restraint, higher or lower -the highest in this case- of specific rights of representatives, but the subordination and subsequent downgrading of the entire rule of law to the rule of the majority, aside from any regulation. Those rights would have been subjected to a severe violation, as well as the due legislative procedure, even assuming that the majority would have allowed for a wider scope of participation for minorities. The power of deputies -especially those associated with the fundamental right provided for in art. 23.2 CE- are performed and respected according to the rule of law, not to a courteous deference (CCJ 109/2016, of 7 June, LG 5).

D) The Chamber also decided, throughout the accelerated course of this abnormal "proceedings", the abolition of what the President called "processing" for requesting an opinion from the Council for Statutory Guarantees on the conformity of the bill with the Constitution and the SAC, guarantee created by the own Statute [art. 76.2.b)], in favour of the best accommodation of legislative initiatives to the constitutionality block, for whose specific regulation the Statute itself refers to "the terms established by law" (initial section of the same art. 76.2 SAC), namely, Law 2/2009, governing the own Council. It is worth highlighting that this Law is entitled to request an opinion on "the compliance with the Statute of Autonomy and with the Constitution of drafts and bills approved by the Government, including those processed in a single reading" [art. 16.1.b)] by two parliamentary groups or one-tenth of deputies [art. 23.b)]. This request is processed through the *Mesa* of the Chamber, whom declares its admissibility or non-admissibility, and gives rise, if admitted and submitted to the Council, to the suspension of the corresponding legislative procedure whilst the opinion is produced, or else until a specific period has elapsed without having been submitted (arts. 26.1 and 4 and 27.bis.1 and 5). The RPC additionally provides for a processing of subsequent amendments to these opinions (art. 120).

It is unambiguously apparent from all this regulation that the request for an opinion from the Council for Statutory Guarantees means, for all groups and deputies qualified by the applicable Law, a guarantee that relates to the SAC itself and which is included as such power under Law 2/2009 and the RPC, all along the legislative procedure. As a safeguard in the interest of constitutional regularity of legislative initiatives and a power conferred to the deputies and groups legally qualified in respect thereof, the opportunity to request for an opinion cannot be abolished by the Chamber without losing the integrity of the own legislative procedure and, at the same time, the rights of the representatives to exercise this specific power conferred by the Law and incorporated to its legal, constitutional status (art. 23.2 CE). However, the Plenary abolished this power without further ado, and the subsequent safeguards through the particular processing provided for the bill of the "self-determination referendum". The Plenary carried it out under its exclusive authority, notwithstanding the continuous protests of deputies members of minorities and despite express warnings of the own Council for Statutory Guarantees, a body that, by an agreement taken on the same 6 September 2017 and following the requests submitted by two parliamentary groups, reminded the Parliament "the mandatory nature, within the legislative procedure and

subsequent to the publication of any bill, of granting a period for requesting an opinion from this Council".

E) It follows from the foregoing that, in the parliamentary processing which ended up in the Law 19/2017, serious violations of the legislative procedure were found, which undoubtedly affected the formation of the Chamber's will, the rights of minorities and the citizens' rights to take part in public affairs through their representatives (art. 23.1 and 2 CE).

The Court points out, to this effect, that the primary role of any parliamentary assembly, and hence of the Parliament of Catalonia (arts. 152.1 CE and 55.1 SAC), is the representation of all its citizens; a role which is only properly fulfilled if those representatives elected by the electoral body for carrying it out do adhere on the whole to the proceedings provided for by the legal system and to the legal rules which, mostly integrated within the Chamber's rules of procedure, ensure no discriminatory participation for all representatives. This ensures the necessary respect for minorities, without which the principle of the majority for the final adoption of decisions, equally indisputable, would jeopardize its legitimacy. The parliamentary democracy certainly is not exhausted by forms and proceedings, but respect for both of them lies within its inexcusable premises (CCJ 109/2016, LG 5). Which has been jeopardized all along the legislative proceedings is the proper formation of the Chamber's will; perhaps, this could have not finally been altered, according to some discussions taken in this parliamentary debate unfortunately implied, if the legal boundaries regulating the procedure to exercise the legislative proceedings would have been followed (and not infringed, as it really happened). The legislative's will is constitutional and therefore has legitimacy if, and only if, those proceedings are followed.

7. For the foregoing reasons, we hereby declare the unconstitutionality and nullity, in its entirety, of the Law issued by the Parliament of Catalonia no. 19/2017, of 6 September, so-called "on the self-determination referendum" (art. 39.1 LOTC). Given that the present Judgment "shall be fully binding on all persons" (arts. 164.1 CE and 38.1 LOTC), it is therefore inappropriate to grant the petitioning party's request in respect of the personal notification to authorities and public offices from the *Generalitat.* However, as provided for in arts. 87.1 and 92.1 LOTC, it is appropriate to declare that the duty of those authorities and public offices shall remain, as stated in the decision issued on 7 September 2017 (second fact of this Judgment) and currently with regard to preventing or blocking any attempt which would imply ignoring or avoiding the ruling of this Judgment (in a similar vein, CCJ 90/2017, LG 13).

R U L I N G

In consideration of all of the foregoing, the Constitutional Court, BY THE AUTHORITY CONFERRED BY THE CONSTITUTION OF THE SPANISH NATION,

Has decided

To uphold the present action on unconstitutionality and, consequently, to declare the nullity and unconstitutionality of the Law of Catalonia 19/2017, of 6 September, so-called "on the self-determination referendum"

May this Judgment be published in the "Official State Gazette" (*Boletín Oficial del Estado*).

The present judgment was handed down in Madrid, on 17 October 2017.

[Signatures below]