Constitutional Court judgment 259/2015, of 2 December 2015. (Unofficial translation)

The Constitutional Court, in full bench, composed of the Honour Judges Mr. Francisco Pérez de los Cobos Orihuel (President), Ms. Adela Asua Batarrita, Ms. Encarnación Roca Trías, Mr. Andrés Ollero Tassara, Mr. Fernando Valdés Dal-Ré, Mr. Juan José González Rivas, Mr. Santiago Martínez-Vares García, Mr. Juan Antonio Xiol Ríos, Mr. Pedro José González-Trevijano Sánchez, Mr. Ricardo Enríquez Sancho, and Mr. Antonio Narváez Rodríguez, has pronounced

IN THE NAME OF THE KING

the following

J U D G M E N T

In the challenge to enactments of the Autonomous Communities (Title V, Organic Law on the Constitutional Court, *Ley Orgánica del Tribunal Constitucional*, hereinafter "LOTC") no. 6330-2015, filed by the State Attorney, acting on behalf of the Government of the Nation, against Resolution 1/XI adopted by the Parliament of Catalonia, of 9 November 2015, on the beginning of the political process in Catalonia arising from the election results of 27 September 2015. The Parliament of Catalonia has been party and submitted its pleadings. The judgment has been drawn up by Judge Mr. Andrés Ollero Tassara, who expresses the opinion of the Court.

I. Background Facts

1. In a writ registered at this Court on 11 November 2015, the State Attorney, on behalf of the Government of the Nation, has challenged Resolution 1/XI adopted by the Parliament of Catalonia, of 9 November 2015, on the beginning of the political process in Catalonia arising from the election results of 27 September 2015 (Official Gazette of the Parliament of Catalonia, *Boletín Oficial del Parlamento de Cataluña*, hereinafter "BOPC", no. 7, of 9 November 2015) under Article 161.2 of the Spanish Constitution (*Constitución Española*, hereinafter CE) and LOTC Articles 76 and 77.

In this writ, Article 161.2 CE and Article 77.2 LOTC were expressly relied on for the purposes of agreeing to suspend the challenged Resolution.

The literal content of the challenged Resolution (published in BOPC no. 7, of Monday 9 November 2015), disseminated at the time by the Parliament of Catalonia on its website, is as follows [translation of the Spanish-language version]:

Resolution 1/XI adopted by the Parliament of Catalonia, of 9 November 2015, on the beginning of the political process in Catalonia arising from the election results of 27 September 2015.

Plenary Session of the Parliament of Catalonia

The Parliament of Catalonia, meeting in Plenary Session on 9 November 2015, has debated the text of the motion for a resolution on the opening of the political process in Catalonia arising from the election results (proc. 250-00001/11), presented by the Parliamentary Group of Junts pel Sí and the Parliamentary Group of Candidatura d'Unitat Popular—Crida Constituent, and the amendments proposed by the Parliamentary Group of Junts pel Sí and the Parliamentary Group of Candidatura d'Unitat Popular—Crida Constituent (reg. 195), and by the Parliamentary Group of Partit Popular de Catalunya (reg. 196) and the Parliamentary Group of Catalunya Sí que es Pot (reg. 198).

Finally, in accordance with Article 165 of its Regulations, it has adopted the following

Resolution

"ONE. The Parliament of Catalonia notes that the democratic mandate obtained at the elections held on 27 September 2015 is based on a majority of seats won by parliamentary forces whose objective is that Catalonia should become an independent State, and on a wide pro-sovereignty majority of votes and seats in favour of beginning a non-subordinated constituent process.

TWO. The Parliament of Catalonia hereby solemnly declares the beginning of the process to create an independent Catalan State in the form of a republic.

THREE. The Parliament of Catalonia proclaims the opening of a citizen-led, participative, open, inclusive, and active constituent process to lay the foundations for the future Catalan constitution.

FOUR. The Parliament of Catalonia urges the future government to adopt the necessary measures to give effect to these declarations.

FIVE. The Parliament of Catalonia considers it fitting to begin the processing of laws regarding the constituent process, social security system, and tax agency within a period of 30 days.

SIX. The Parliament of Catalonia, as the depositary of sovereignty and the expression of the constituent power, reiterates that this Chamber and the process of democratic uncoupling from the Spanish State shall not be subject to the decisions of the institutions of the Spanish State, in particular the Constitutional Court, which it considers devoid of legitimacy and jurisdiction following its Judgment of June 2010 on the Statute of Autonomy of Catalonia, previously voted on by the people in a referendum, among other Rulings.

SEVEN. The Parliament of Catalonia shall adopt the necessary measures to open this process of uncoupling from the Spanish State in a democratic, broad-based, sustained and peaceful manner making it possible to empower the citizenry at every level, and on the basis of open, active, and inclusive participation.

EIGHT. The Parliament of Catalonia urges the future Catalan government to comply exclusively with those rules and mandates emanating from this legitimate and democratic Chamber in order to safeguard fundamental rights, such as those specified in the Appendix to this Resolution, which may be affected by decisions of the institutions of the Spanish State.

NINE. The Parliament of Catalonia declares its willingness to begin negotiations in order to implement the democratic mandate to create an independent Catalan State in the form of a republic, and it agrees to make this known to the Spanish State, to the European Union, and to the international community as a whole.

APPENDIX. Measures that the future government of Catalonia shall apply in order to safeguard fundamental rights affected by decisions of institutions of the Spanish State.

1. *Energy Poverty*

In order to ensure that no one is deprived of access to basic supplies, the future government shall implement the measures aimed at avoiding energy poverty approved by Law [of the Catalan Parliament] 24/2015 of 29 July, on urgent measures to deal with the emergency regarding housing and energy poverty, in order to guarantee the right of access to drinking water, gas and electricity to individuals and family units at risk of housing exclusion, as long as this situation persists.

2. *Housing*

In order to ensure that no one is deprived of access to decent housing, the future government shall work on the implementation of the new regulatory framework set forth in Law [of the Catalan Parliament] 24/2015 of 29 July, on urgent measures to deal with the emergency regarding housing and energy poverty. In this context, the future government shall ensure that, in eviction proceedings involving the usual residence of individuals and family units in situations of risk of housing exclusion, the principle of appropriate rehousing for the affected individuals and family units be respected as a condition for effecting the eviction.

In addition, the future government shall urgently carry out regulatory changes making it possible to implement the provisions of said Law 24/2015, such as the operating rules of the evaluation committees for the allocation of housing in situations of economic and social emergencies and in other cases of special needs within the scope of the Housing Agency of Catalonia.

3. *Healthcare*

Within the scope of healthcare policies, the future government shall ensure universal access to quality public healthcare, through the Catalan Health Service (Catsalut), to all persons living in Catalonia. No person may be excluded for reasons of origin, irrespective of whether they are insured under or beneficiaries of the National Health System, and independently of whether they are included on local registration rolls. Likewise, no one may be deprived of pharmaceutical assistance on financial grounds.

In accordance with various Resolutions approved by the [Catalan] Parliament, no new tenders for the management of primary care centres may be held.

4. *Education*

The Parliament of Catalonia has lodged an action of unconstitutionality, which was declared admissible on 3 April 2014, against a substantial portion of the articles of Organic Law 8/2013 of 9 December, on the improvement of educational quality. In this action, which was supported by the legal opinion of the [Catalan] Council for Statutory Guarantees, it was argued that the challenged provisions of said Organic Law were contrary to the powers vested in the Catalan Government in this area, contrary to the Catalan educational model determined by the Education Act [of the

Catalan Parliament] of Catalonia, and contrary to the consensus reached by the educational community as a whole. In line with this action, the future government must seek to ensure, in its actions regarding educational issues, the full application of and respect for the powers vested in the Catalan administrations and to maintain the consensus reached by the educational community as a whole.

5. *Guarantee of public freedoms*

The Parliament of Catalonia lodged an action of unconstitutionality against certain articles of Organic Law 4/2015, on the protection of public security, an action that was declared admissible on 21 July 2015. In this challenge, which was supported by the legal opinion of the [Catalan] Council for Statutory Guarantees, it was argued that the challenged provisions of said Organic Law were contrary to fundamental rights protected by international texts such as the Universal Declaration of Human Rights or the European Convention on Human Rights, and by the case law of the European Court of Human Rights. In line with this action, the future government must seek to ensure, in its actions regarding public security issues, the full application of and respect for the aforesaid fundamental rights.

6. *Local administrations*

With a view to ensuring the full powers of the Catalan local administrations, in order to benefit the general interest, the future government shall provide these administrations with the necessary tools to set aside the provisions of Law 27/2013 of the Spanish State of 27 December on the streamlining and sustainability of local government, adopted pursuant to Organic Law 2/2012 of 27 April, on budget stability and financial sustainability, implementing Article 135 of the Spanish Constitution, regarding the limitation of the authority of local entities, the control of service costs, and the obligation to prioritize private economic activity.

7. *Refugees*

In order to address the serious humanitarian situation faced by refugees, the future government shall create a framework for relations with the United Nations High Commissioner for Refugees (UNHCR) in order to receive and provide asylum for the maximum number of refugees, going beyond the decisions taken in this area by the Spanish Government.

8. *Right to abortion*

Regarding the right to abortion, the future government shall be guided by the provisions set forth in Law [of the Catalan Parliament] 17/2015, of 21 July, on effective equality between women and men.

9. *Financing an emergency social and debt management plan*

In order to free up resources to provide funding for a social emergency plan, the future government shall establish, amongst other measures, negotiation channels to reduce debt servicing as a share of total spending.

The future government shall promote, as a priority, the renegotiation of all structured finance operations, separating payments for a service (investment and maintenance) from those that constitute an excessive burden of payment with regard to the current interest and inflation rates. Furthermore, the future government shall urge the holders of administrative concessions or land use rights to restructure their contracts, transforming the depreciation and amortization of investments into ordinary financing through public debt and eliminating excessive capital costs.

> This transformation, which should allow for a reduction in costs for the Catalan Government that may be used to finance the social emergency plan, shall be accompanied by a thorough review of budget spending programmes in order to evaluate and verify their utility at a time when addressing the social emergency has become the top spending priority for the Catalan Government, as expressed in the aforementioned emergency plan. Savings derived from the programme review shall be fully allocated to the social emergency plan.
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> In order to monitor the effectiveness of this objective and this commitment, the future government shall create a working group open to the parliamentary groups.
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> Moreover, the future government shall establish a schedule of meetings with the management of resident banks, in order to explore the possibility of a renegotiation of the payment of interests for social purposes."

2. The challenge is based on the reasoning summarized in brief below.

a) The State Attorney first reproduces the challenged Resolution, and then refers to the requirements of admissibility of the constitutionality proceedings. He considers that there can be no question that this case meets the requisites of jurisdiction (Article 161.2 CE and Article 2.1.f LOTC), legitimation (Article 161.2 CE and Article 76 LOTC), representation (Article 82.1 LOTC), term (Article 76 LOTC) and form (Article 85.1 LOTC); moreover, that the challenged Resolution is a provision ranked below an Act of Parliament that has been issued by the legislative assembly of an Autonomous Community and which is, therefore, ideal subject-matter for these constitutionality proceedings.

After citing the doctrine from Constitutional Court Judgment (*Sentencia del Tribunal Constitutional*, hereinafter "STC") 42/2014, of 25 March (Ground 2), and quoting Constitutional Court Order (*Auto del Tribunal Constitucional*, hereinafter ATC) 135/2004, of 20 April, the State Attorney indicates that the challenged Resolution is a formally complete or definitive act, since it constitutes a decision adopted by the Parliament of Catalonia, after debate and voting, expressing an institutional manifestation of the Chamber's intent. In his opinion, it also has legal effects, because, in the Resolution, the Parliament considers itself a constituent power for creating a Republic of Catalonia, ordering the Catalan Government to adopt the measures necessary to that end, which include the drafting of a constitution, the creation of State structures, the non-application of Spain's national legislation in Catalonia, and disobedience towards institutions of the Spanish State, in particular, the Constitutional Court.

The Resolution, therefore, dovetails perfectly with the purpose of LOTC Title V, which regulates challenges to enactments without force of law and to decisions of the Autonomous Communities, in that it does not simply make political statements without any legal enforceability, but rather establishes clear mandates, with immediate legal repercussions, for the [Catalan] Parliament itself, the Catalan Government, and even the people of Catalonia, with specific and clearly unconstitutional content.

As to the scope of the challenge, he states that the Resolution is being challenged in its entirety because it must be interpreted as a whole, as a systematic package, ordering secession from Spain by unconstitutional and non-democratic means.

b) The State Attorney, under the title "Our Constitutional Order of Coexistence", affirms that the Spanish people, the Spanish nation, indicated their desires, principles and purposes regarding coexistence in the Preamble to the Constitution of 1978, as an expression of their collective determination. In his pleadings, the State Attorney partially cites the content of that Preamble and of Articles 1, 2, 3 and 23 CE, before referring to the content pertaining to the rule of law, which, he argues, is binding on all citizens, who should respect the rights and freedoms of others, but which very directly concerns public authorities and governments, who should act with the strictest observance of constitutional rule and the principle of legality.

These essential constitutional principles and the rule-of-law-based State that guarantees them are being attacked head-on by the challenged Resolution, since they aim to break up the framework of constitutional coexistence in that the Parliament of Catalonia is attributing to itself the condition of a constituent Chamber, changing the system of representative democracy which is the source of its legitimacy into a kind of plebiscitary system, calling upon the people and the Government of Catalonia to disobey the shared rules of coexistence and, ultimately, dispensing with the legitimate constitutional channels to amend these shared rules, encouraging others to a unilateral break.

He explains the context behind the Resolution, which, he said, is not an isolated decision, but rather the continuation of a succession of repeated initiatives and actions of the institutions of the Autonomous Community [of Catalonia], both its Parliament and its Government, adopted during the previous legislative term and aimed at building up efforts towards the same goal of breaking away. This process began with Resolution 5/X of the [Catalan] Parliament, of 8 March 2013, approving a pro-sovereignty Declaration and the right to decide of the people of Catalonia, which was annulled, insofar as it recognized Catalonia as a sovereign entity, by STC 42/2014. It continued with the provisions introduced and actions carried out by the institutions of the Autonomous Community in order to hold a referendum-like vote during the second half of 2014, which led to STC 31/2015 and STC 32/2015, of 25 February, and STC 138/2015, of 11 June, which declared both the rules laid down and the actions carried out by the Catalan Government on 9 November to be unconstitutional. This process was also made manifest, principally, by the approval of Catalan Act 3/2015, of 11 March, on fiscal, financial and administrative measures, which included provisions aimed at creating State structures in the area of the public treasury, social security, public property, strategic infrastructure and the regulation of markets; of Catalan Government Decree 16/2015 of 24 February, which created the office of Commissioner for National Transition; and lastly, of the Agreement of the Council of Government of 17 February of 2015, which adopted the so-called Executive Plan for Preparing State Structures and the Strategic Infrastructures Plan. The Court agreed to uphold the suspension of all of the foregoing in the ATCs of 3 November 2015, issued in action of unconstitutionality 3493-2015 and Positive Conflict of Jurisdiction

Case 3808-2015, which have proven the existence of what was called a "process of national transition" having obvious "constitutional significance".

c) The pleadings of the State Attorney then focus on what he calls the "manifest unconstitutionality" of the challenged Resolution, on the grounds of violating Articles 1.1, 1.2, 1.3, 2, 9.1, 23, 164 and 168 CE.

He considers that the key clause of the Resolution is where it attributes to the Parliament of Catalonia a constituent power and the ability to launch a breakaway process that is imposed unilaterally and which dispenses with no respect for the principles underlying the Constitution, with absolute contempt for the rule of law.

Under Article 1.2 CE, "national sovereignty is vested in the Spanish people, from whom emanate the powers of the State". The Constitution itself is a constituent act of the Spanish people, as reflected in its Preamble. In Article 1.2 CE, the term "State" must be understood in its most comprehensive sense, as used in Article 137 CE, as has been established in constitutional case law (STC 4/1981, of 2 February, Ground 3; STC 12/1985, of 30 January, Ground 3; STC 247/2007, of 12 December, Ground 4), to encompass the Autonomous Communities. Article 3.1 of the Statute of Autonomy of Catalonia [*Estatut d'autonomia de Catalunya*, hereinafter "EAC"] proclaims the general principle that the Catalan Government forms [part of] "the [Spanish] State", and STC 31/2010, of 28 June, has considered this an "indisputable affirmation insofar as, indeed, the State, in its widest sense —that is, the Spanish State established by the Spanish Constitution— encompasses all of the Autonomous Communities into which said State is organized territorially ... and not only that which more strictly speaking should be called the 'central State', which is not in any way the same thing as the Spanish State, but which, rather, is included within the latter, thus forming, in union with the Autonomous Communities, the State as a whole" (Ground 13). Therefore, the legislative assemblies of the Autonomous Communities (Article 152.1 CE), and among them the Parliament of Catalonia, are in this sense also "authorities of the State", based on the national sovereignty held by the Spanish people, and not any fraction thereof, as would be the people of one of the Autonomous Communities.

After citing the doctrine established in STC 103/2008 of 11 September (Ground 4), STC 31/2010 (Grounds 8, 9 and 11) and STC 42/2014 (Ground 3), the State Attorney maintains that from the viewpoint of the Constitution there is no other sovereign than the Spanish people (Article 1.2 CE), and that, therefore, by attributing to itself the nature of "constituent" (paragraph three), as "the depositary of sovereignty and the expression of the constituent power" (paragraph six), and by basing this legitimacy on "the democratic mandate obtained at the elections held on 27 September 2015", it clearly violates Article 1.2 CE.

d) The challenged Resolution is also irreconcilable with Article 2 CE, to the extent that it clashes directly with the very foundations of the Constitution, the indissolubility of the Nation, and the indivisibility of the homeland of all Spaniards. Attributing sovereignty to the Catalan people, as a constituent authority, means attributing to it the right to secession which

it could exercise if it had the inclination to do so; i.e., it means conferring the power to dissolve, at its sole bidding, what the Constitution proclaims to be indissoluble, and divide what it declares indivisible. To support these grounds for the action of unconstitutionality, the State Attorney cited the doctrine established in STC 103/2008 (Ground 4), STC 31/2010 (Ground 12), and STC 42/2014 (Ground 3).

e) Likewise, it is argued that the Resolution violates CE Article 168, which defines the procedure for the constitutional reform that would be necessary in the case of an intent to recognize the sovereignty of the Catalan people, i.e. the recognition of the right of a fraction or part of the Spanish people to be begin, at their sole bidding, a constitutional stage.

After citing the doctrine on the so-called "right to decide" of STC 103/2008 (Ground 4) and STC 31/2010 (Ground 12), the State Attorney states the opinion that, unlike Resolution 5/X, which led to STC 42/2014, in the case of the Resolution challenged here, there can be no interpretation that makes it acceptable under the Constitution, since it clearly involves a unilateral break with the constitutionally established order. The proclamations set forth therein do not express political aspirations which could be channelled by democratic or constitutional means. The condition of being a constituent power, which the Parliament of Catalonia attributes to itself, is associated with a unilateral imposition that dispenses with any constitutional, democratic channel. This can be clearly concluded by reading the entire Resolution and especially paragraphs one, six, seven, eight and nine. For their part, the references in paragraph three to a "citizen-led, participative, open, inclusive, and active constituent process to lay the foundations for the future Catalan constitution" fall within plebiscitary dynamics that lie outside of the Constitution and the law.

There is no mention whatsoever —clearly quite the contrary— to the use of the provisions of the Constitution which regulate constitutional reform, regarding which the Parliament of Catalonia may take the initiative (Articles 166 and 87 CE). The sovereignty of the people of Catalonia cannot be a point of departure towards a hypothetical constitutional reform of Article 168 CE; in any case, it could only be a point of arrival by virtue of a sovereign decision by the Spanish people taken by means of a constitutionally established procedure, since constitutional reform by means of this provision must occur prior to the declaration of sovereignty by any fraction or part of the Spanish people (STC 103/2008, Ground 4). In this regard, citing the doctrine of STC 42/2014, the State Attorney recalls the fact that there is room in our legal system for proposing notions that aim to amend the very foundations of the constitutional order, "as long as they are not prepared or defended by means of an activity that contravenes democratic principles, fundamental rights, or the other constitutional mandates, and that the attempt to achieve this is carried out within the framework of procedures for reforming the Constitution, because respect for these procedures is always mandatory" (Ground 4).

In sum, it is argued that the Catalan people's right to become a State could only exist if, once the Constitution had been reformed through the procedure set forth in Article 168 CE, the sovereign Spanish people recognized it pursuant to the procedure set forth to that end in

the Constitution. It is unacceptable to attribute constituent power —at present and in the act— to the people of Catalonia, in express contradiction with the constitutional channels.

f) The Resolution is also said to be in blatant violation of Article 1.3 CE, which declares that "the political form of the Spanish State is that of a Parliamentary Monarchy", because said Resolution "solemnly declares the beginning of the process to create an independent Catalan State in the form of a republic" (paragraph two), as well as declaring the creation of an "independent Catalan State in the form of a republic" (paragraph nine).

g) It is also claimed that the challenged Resolution violates Article 1.1 CE, as regards the configuration of the Spanish State as a rule-of-law-based State, and one of its principal expressions, Article 9.1 CE, which establishes that "citizens and public authorities are bound by the Constitution and all other legal provisions", a precept that enshrines the rule according to higher law as the expression of the people's will.

The Resolution is an act of radical insubordination to the Constitution, and, therefore, an infringement of Articles 1.1 and 9.1 CE. This insubordination, furthermore, becomes crass and explicit when the Resolution declares the opening of "a non-subordinated constituent process" (paragraph one), that the "democratic uncoupling from the Spanish State shall not be subject to the decisions of the institutions of the Spanish State, in particular the Constitutional Court" (paragraph six), and that the Parliament "shall adopt the measures necessary to open this process of uncoupling from the Spanish State, in a democratic, broad-based, sustained and peaceful manner making it possible to empower the citizenry at every level, and on the basis of open, active, and inclusive participation" (paragraph seven). Such insubordination is further underlined when "the future Catalan government" is urged "to comply exclusively with those rules and mandates emanating from this legitimate and democratic Chamber in order to safeguard fundamental rights … which may be affected by decisions of the institutions of the Spanish State" (paragraph eight).

The freedom of a parliament or of the government of an Autonomous Community to choose policies is legally limited by the Constitution and the Statute of Autonomy, and this is one of the clear meanings of the principle of being bound to the Constitution that is contained in Article 9.1 CE. No legislative assembly of an Autonomous Community may adopt a resolution to promote policies that are in absolute contradiction with the Constitution. The legal effects of the challenged Resolution, as has already been mentioned, mean that the Catalan Parliament is imposing upon itself and upon the Catalan Government a series of decisions that constitute, more than just a specific breach of a constitutional rule, a repudiation of the Constitution's essential clauses, the establishment of a principle of legitimacy that is in absolute contradiction with it.

The other legal effect targets citizens (paragraph three), promoting their political action on the basis that they, and only they, have been granted the status of sovereign people to decide their collective political future, which is also incompatible with Article 9.1 CE. Our Constitution grants all citizens the right to freely express that their nationality or region

should become independent from Spain [Article 20.1.a) CE] and allows them to exercise the right of association to create political parties that include separation from Spain in their ideology or programme (Articles 6 and 22.1 CE). However, this must be channelled through the appropriate constitutional procedure, and in this regard, citizens are also bound by the Constitution (STC 48/2003, of 12 March, Ground 7).

h) The State Attorney argues that the Resolution, in stating that neither the Parliament itself nor the process of uncoupling from the Spanish State shall be subject to the decisions of the Constitutional Court (paragraph six), also violates Article 164 CE with regard to Article 87 LOTC.

Moreover, the State Attorney asserts that the Resolution, in reiterating the declaration of the Catalan people's sovereignty (paragraphs three and six), directly contravenes STC 42/2014, which declared the Catalan Parliament's Resolution 5/X unconstitutional, thus disobeying the Constitutional Court.

i) The Resolution is also said to breach Article 23 CE, by granting the Catalan Parliament the status of constituent Chamber, depriving all other Spaniards of their fundamental right to participate in constitutional reform processes (STC 103/2008, Ground 4), and *de facto* modifying the principles and procedures of representative democracy and citizens' right to participate in public affairs through the channels set forth in the aforementioned Article, by admitting plebiscitary formulas.

The Resolution begins by affording plebiscitary status to what are merely elections to the Parliament of an Autonomous Community, which are based on representative democracy and have no plebiscitary status whatsoever in the Constitution or in Catalonia's Statute of Autonomy. Furthermore, it modifies the representative mandate of the Parliament and of its members, by providing them with a status which falls outside the constitutional and parliamentary regulation of their duties, rights and obligations.

j) It also violates the principle of loyalty to the Constitution and the duty to be faithful to the Constitution (STC 25/1981, of 14 July, Ground 3; STC 18/1982, of 4 May; STC 11/1986, of 28 January, Ground 5; STC 239/2002, of 11 December, Ground 11; STC 13/2007, of 18 January, Ground 7).

The entire Resolution is a paragon of disloyalty to the Constitution in its unilateral, direct and disconnected action, not subject to the decisions of the Spanish State's institutions. Over and above the scope of jurisdiction, loyalty to the Constitution must by understood as subjection to or compliance with the supremacy of the Constitution, which does not mean ideological adherence to the Constitution, but, rather, compliance with the rules of the political game and the existing legal system, and not attempting to transform these through illegal means. This duty, therefore, is not contrary to freedom of ideology (Article 16 CE), but, rather, is a realization of the duty to comply with the Constitution (Article 9.1 CE),

which, in the case of public authorities, takes the form of a general obligation to perform their duties in conformity with the Constitution.

k) The Government Counsel State Attorney maintains that the challenged Resolution violates Articles 1, 2.4 and 4.1 EAC, in the terms in which they have been interpreted in STC 31/2010 (Grounds 8 and 9).

In his pleadings, the State Attorney reproduces the aforementioned conclusions of law (Grounds 8 and 9), on the basis of which he understands that the democratic legitimation of the Parliament of Catalonia—as the political representation of the Catalan people from whom its powers emanate—does not allow it to declare the existence of a constituent power, that is to say, of a sovereign Catalan people in competition with the sovereign Spanish people. Without the act of sovereignty of the Spanish people, who recognized the right to autonomy of the nationalities and regions (Articles 2 and 137 CE), the Catalan people would not exist as a legal and political entity entitled to the right to autonomy.

The declaration also contains a reference to the fact that "the democratic mandate obtained at the elections held on 27 September 2015 is based on a majority of seats won by parliamentary forces whose objective is that Catalonia should become an independent State, and on a wide pro-sovereignty majority of votes and seats in favour of beginning a non-subordinated constituent process" (paragraph one). This invocation lacks any kind of legitimacy, because there is no such democratic mandate, as elections to the parliament of an Autonomous Community can never confer constituent power on the resulting legislative assembly. The status of Catalan citizen does indeed entail the "right to elect their representatives in the representative political bodies" (in this regard, STC 31/2010, Ground 11). Only the Spanish people are sovereign. Only the Spanish people, and not one of its fractions, can be the "ideal unit for attributing constituent power and, as such, the foundation of the Constitution and the legal system". Only after, and not before, a new constitutional act by the sovereign Spanish people—including the Catalan people and all the other "peoples of Spain"—could the people of Catalonia, in a legally legitimate manner, declare themselves sovereign. Only a sovereign decision by the Spanish people could recognize, in a constitutionally valid manner, the sovereignty of the people of Catalonia.

l) Lastly, the State Attorney classes as blatant the violation of the constitutional system of jurisdiction in paragraphs five and eight of, and in the Appendix to, the Resolution.

The rules set forth in paragraph five regarding the public treasury and social security, as well as those set forth in the Appendix, form part of the Catalonian Parliament's intent to breach its obligations deriving from the rule of law and from the constitutional system of distribution of powers. To the extent that these provisions are part of the creation of what are being called the "structures of State", it must be recalled that the ATCs of 3 November 2015, handed down in relation with action of unconstitutionality 3493-2015 and positive conflict of jurisdiction Case 3808-2015, upheld the suspension of the provisions of Catalan Law 3/2015, of 11 March, on fiscal, financial and administrative measures; Catalan Government Decree

16/2015 of 24 February, which created the office of Commissioner for National Transition; and lastly, of the Agreement of the Council of Government of 17 February of 2015, which adopted the Executive Plan for Preparing State Structures and the Strategic Infrastructures Plan. In particular, as regards paragraph eight of the Resolution, and the Appendix to which it refers, the essential part, in the Government Counsel's opinion, is not so much the content itself as the fact that it is included in the Resolution for the purpose of safeguarding "fundamental rights … which may be affected by decisions of the institutions of the Spanish State". Without prejudice to the fact that the content of the Appendix includes controversial issues, reflecting as-yet unresolved constitutionality proceedings, the unconstitutionality of this paragraph eight and the Appendix stems from the intent to not comply with any of Spain's national laws, and to do so for a reason which is repugnant in a democratic system such as ours—the assumption that the central Spanish State institutions are violating the fundamental rights of Catalans and that, faced with such an unfair circumstance, the response must be non-compliance with the law.

The State Attorney concludes his pleadings by requesting that the Constitutional Court admit the challenge and that, after the pertinent legal procedures, it hand down a Judgment declaring the Resolution of the Parliament of Catalonia 1/XI, of 9 November 2015, on the beginning of the political process in Catalonia arising from the electoral results of 27 September 2015, to be unconstitutional, null and void.

In a first additional pleading, expressly relying on Article 161.2 CE, the Government Counsel requests that said Resolution be declared suspended as of the date on which the challenge was lodged, informing the Parliament of Catalonia of this circumstance, and that this suspension be published in the *Boletín Oficial del Estado* [Official State Gazette, hereinafter "BOE"], in the *Boletín Oficial del Parlamento de Cataluña* [Official Gazette of the Parliament of Catalonia], and in the *Diario Oficial de la Generalidad de Cataluña* [Official Journal of the Catalan Government] so that it may be known by and enforceable with regard to any third party (Article 64.4 LOTC, with regard to Article 77 LOTC).

In a second additional pleading, pursuant to the provisions of Articles 87.1 and 92 LOTC, he requests that the following be notified personally of any order of suspension handed down: the Speaker of the Parliament of Catalonia, each of the members of the Bureau, the Secretary-General of the Chamber, the acting President of the Catalan Government, and, as the case may be, the person designated to hold that position, the members of the acting Catalan Government, and, as the case may be, those designated by the President of the Autonomous Community as a result of the swearing-in by the Parliament of Catalonia. He also requests that said notification include the imposition upon the Speaker of the Parliament of Catalonia, the members of the Bureau and the Secretary-General of the Chamber, of the express prohibition to allow any initiative to be admitted—for consideration or for discussion and voting—whether of a legislative nature or of any other kind, aimed at complying, either directly or indirectly, with the suspended Resolution; and the imposition upon the President of the Catalan Government and the members of the Council of Government of the prohibition to promote any legislative initiative, hand down any regulatory provision, or carry out any other

activity for the same purpose. Lastly, he requests that all these persons be notified with an express warning of suspension from office [Article 92.4.b) LOTC] and that the proceedings for the offence of disobedience of judicial mandates would be followed in the event of non-compliance.

3. In a non-reasoned order of 11 November 2015, the Court, in full bench resolved to admit the challenge; to transfer the writ and the documents presented to the Parliament of Catalonia, via its Speaker, so that, within ten days, she may enter an appearance in the proceedings and submit whatever pleadings deemed necessary; to note that the Government had relied on Article 161.2 CE, which, pursuant to Article 77 LOTC, produces the suspension of the challenged Resolution and its Appendix as of the date on which the challenge was lodged, for the parties to the proceedings, and as of the date of its publication in the "BOE", for third parties; to notify the following personally of the present ruling, pursuant to the provisions of Article 87.1 LOTC: the Speaker of the Parliament of Catalonia, the other members of the Bureau, the Secretary-General of the Chamber, the President and other members of the acting Council of Government of the Catalan Government, reminding them of their duty to prevent or stop any initiative involving ignoring or evading the decreed suspension, warning them of possible liabilities, including criminal liability, which they may incur; to request, pursuant to Article 87.2 LOTC, the jurisdictional assistance of the High Court of Justice of Catalonia in order to effect the notifications, demands and warnings decreed; and, lastly, to publish the content of this ruling in the *Boletín Oficial del Estado* [Official State Gazette], in the *Butlletí Oficial del Parlament de Catalunya* [Official Gazette of the Parliament of Catalonia], and in the *Diari Oficial de la Generalitat de Catalunya* [Official Journal of the Catalan Government].

4. In a writ registered at this Court on 27 November 2015, the Speaker of the Parliament of Catalonia, in representation and in defence of the Chamber, and in accordance with the Bureau Decision of 24 November 2015, carried out the relevant pleadings procedure.

a) The writ submitted by the Parliament of Catalonia points out that Resolution 1/XI, of 9 November 2015, expresses, through Parliament, the content of the political mandate acquired by the parliamentary groups that took the initiative, as a consequence of the elections held on 27 September 2015. This mandate is based on the election programmes submitted for the free democratic exercise of the fundamental right to political participation (Article 23.2 CE). These programmes clearly and explicitly had as their priority political goal the initiation of the process of creating an independent Catalan State. The challenged Resolution was adopted by the freely elected representatives of the Catalan people, and is directly underpinned by the basic principles of democracy and political pluralism, and obtains its legitimacy from the citizens' exercise of their right to political participation.

b) The Parliament of Catalonia then states that Resolution 1/XI, of 9 November, is a parliamentary act of a strictly political nature, as is inherent to resolutions and motions stemming from the exercise of a parliament's function of driving political and governmental

action. This type of resolutions have no other scope than to express an intent, aspiration or wish of the Chamber, and they are only subject to the political control mechanisms set forth in parliamentary regulations, in this case that of Article 165.4 of the Regulations of the Parliament of Catalonia (*Reglamento del Parlamento de Cataluña,* hereinafter "RPC").

Thus, pursuant to the Parliament's writ, parliamentary motions and resolutions adopted in the exercise of the function of driving or directing the political system have no legally binding force and cannot, for themselves, displace or override the application of the principle of legality to which the Government and citizens are bound. The external force of this type of parliamentary acts is limited to a mere indicative instruction which is more an expression of an aspiration or wish than a binding provision, because formally they are not part of positive law. In sum, they are parliamentary decisions which, given their nature, fall within the framework of the political relation between the Parliament and the Government, or of the expression of an intent addressed to citizens.

Therefore, due to the political nature inherent to the nature of the act, the Parliament considers that Resolution 1/XI, of 9 November, lacks the necessary elements to be appropriate subject-matter for jurisdictional constitutionality proceedings.

c) According to the Catalan Parliament's writ, Spain's current Constitution does not forbid or impose limits upon political debate, specially that which takes place in Parliament, even when there is a discrepancy between the project or idea being debated and the content of the Constitution. As the Constitutional Court has repeatedly recognized, Spain's constitutional order does not follow a model of "militant democracy" that imposes a duty of positive adherence to said order upon the representative public institutions.

d) The Parliament of Catalonia asserts that Resolution 1/XI, of 9 November, is merely, and nothing more than, a declaration of will and intent. It cites the STC on the Declaration of Sovereignty and of the Catalan people's right to decide (Resolution 5/X, of 23 January 2013), in which the Court recognized the possibility that parliamentary actions for driving politics can produce legal effects, even if these are not binding. The pleadings argue that the doctrine established in said Ruling of this Court must necessarily be reconsidered and revised in order to recognize the Catalan Parliament's full capacity to express society's political pluralism and the majority will that it represents, especially when this will was expressed clearly and unequivocally in an electoral process in which the political project referred to in the Resolution constituted—according to the Catalan Parliament's writ—the central and unquestionable axis of the will expressed by the citizens of Catalonia through the exercise of the right to universal, free and direct suffrage.

e) The Parliament understands that the doctrine established in STC 42/2014, of 25 March, is not coherent with the system of responsibility and control that parliamentary law

establishes with regard to parliamentary resolutions and motions, which is exclusively based on political control pursuant to the chambers' regulations. Reconsidering the doctrine established in STC 42/2014 is, the pleadings argue, essential to preserve the balance between institutions, so that the Parliament is guaranteed the exercise of the functions attributed to it in the framework of the Constitution and of the Statute of Autonomy, without the Constitutional Court being able to interfere therein when such exercise lacks the legal nature necessary to legitimize it.

Thus, the Parliament asks the Constitutional Court to exercise the necessary self-restraint to ensure that it does not overstep its bounds and invade the Parliament's own sphere of action. What is at stake here, in its opinion, is one of the capital issues posed in contemporary constitutional States, namely the relation between constitutional justice and popular representation.

All of the above necessarily leads, according to the Catalan Parliament's writ, to the non-admission of the challenge because there is no appropriate subject-matter for a declaration of unconstitutionality, given that the foundations of the constitutional and parliamentary system require distinguishing between the meaning and scope of Resolution 1/XI, of 9 November, as an act of political drive, and any parliamentary or administrative initiatives that may possibly derive therefrom and which, due to their nature, are capable of producing the necessary legal effects to justify, as the case may be, intervention by the Constitutional Court.

f) The writ of the Parliament of Catalonia concludes by requesting that the Constitutional Court hand down a judgment declaring the inadmissibility of the challenge to Resolution 1/XI because it is not an appropriate act to be subjected to constitutionality proceedings before the Constitutional Court, given its political nature and the fact that it is an expression of a parliamentary intention based on the democratic principle and political exercise of political pluralism.

5. In a procedural order of 1 December of 2015, it was decided to set 2 December 2015 as the date for discussing and voting on the present Judgment.

II. Grounds

1. In reliance on Article 161.2 CE, and using the channels provided by Articles 76 and 77 LOTC, which authorize it to challenge "enactments without force of law" and "decisions of the Autonomous Communities" before this Court, the Government of the Nation has challenged Resolution 1/XI, adopted by the Parliament of Catalonia on 9 November 2015 (published in the same day's BOPC), "on the beginning of the political process in Catalonia

arising from the election results of 27 September 2015". In the pleadings lodged by the State Attorney, said Resolution, which is cited in full in Section 1 of the Background section above, is branded unconstitutional on account of contravening Articles 1, 2, 9.1, 23, 164 and 168 CE; the principle of constitutional loyalty and the duty of fidelity to the Constitution; and Articles 1, 2.4 and 4.1 of the EAC. Notwithstanding that certain points of the pleadings attribute breaches of constitutional law to specific paragraphs of the Resolution in question (of the nine paragraphs that comprise its main body), the action of unconstitutionality is directed at the text as a whole. Therefore, the pleadings stress that the Resolution must be "interpreted as a whole", including its Appendix. The State Attorney also argues that the Resolution is unconstitutional not only in consideration of the aforementioned statutes—i.e. the Constitution and the EAC—but also because it contravenes the constitutional and statutory "system of distribution of powers" between the State and the Autonomous Community.

It is also argued that the Resolution violates Article 168 CE, which governs the constitutional reform procedure that would be required in any attempt to have the Catalan people recognized as sovereign; in other words, to have a fraction of the Spanish people recognized as being entitled to commence a constituent process at the sole bidding of that fraction.

The pleadings first cite doctrine from this Constitutional Court on the purported "right to decide"—from STC 103/2008 (Ground 4) and STC 31/2010 (Ground 12)—before going on to argue that it is the State Attorney's understanding that, unlike Resolution 5/X, on which STC 42/2014 was handed down, there can be no interpretation that makes the Resolution challenged in the present action of unconstitutionality acceptable under the Constitution, as said Resolution represents a clear and unilateral breach of the constitutional order. The statements made in the Resolution do not express political aspirations that could be redirected into democratic or constitutional channels. The attribution of constituent powers to the Parliament of Catalonia is linked to a unilateral imposition which entirely disregards all constitutional and democratic channels. Moreover, the mentions of a "citizen-led, participative, open, inclusive, and active constituent process to lay the foundations for the future Catalan constitution" reflect plebiscitary dynamics that go beyond the scope of the Constitution and the law.

The Speaker of the Parliament of Catalonia entered an appearance in this case in representation of said institution, putting forward the arguments set forth in the Background section above. In summary, the defence pleadings contend that the Parliament of Catalonia adopted Resolution 1/XI in the discharge of its duty to further political and governmental activity (Article 55.2 EAC and Article 164 RPC), and that it should be considered solely in this particular context. The Speaker argued that the Resolution expressed the political mandate taken on by the groups whose manifesto for the elections held on 27 September 2015 promoted the adoption of a resolution of this kind, on the basis of the fundamental principles democracy and political pluralism.

A Resolution such as this one, which the Parliament of Catalonia maintains to be strictly political, has, its representative argues, no other scope than to express a determination, aspiration or desire of the Parliament, since the Resolution lacks any binding authority, and cannot waive the application of the principle of legality. Consequently, the pleadings state, the challenged Resolution is not suitable subject-matter for unconstitutionality proceedings conducted before this Court, as the political determination expressed therein does not violate the constitutional and statutory framework, and because said framework does not prohibit the expression and defence of political projects that go against the terms of the Constitution, citing to this end STC 42/2014, of 25 March.

The Parliament of Catalonia argues that, since it lacks any legal authority, Resolution 1/XI is not capable of bringing about any constitutional violation whatsoever. On this point, it is suggested that the doctrine established in the aforementioned STC 42/2014 should be re-examined, on the grounds that it conflicts with the system of responsibility established by parliamentary law with regard to the political control of parliamentary resolutions and motions. STC 180/1991 of 23 September and ATC 135/2004 of 20 April are, however, considered to be coherent with this system. It is argued that this re-examination is necessary to maintain the inter-institutional balance, ensuring that the Constitutional Court does not interfere with the Parliament's work when this work is not legally binding. For all of the foregoing reasons, the representative of the Parliament of Catalonia petitions the Court to reject this challenge.

Now that we have summarized the terms of the action, and before going on to examine the merits of this constitutional dispute, the Court considers it necessary to state that it has made deciding on this case a priority, as warranted by its serious constitutional significance, which will be seen more clearly in the following analysis.

2. The question of whether a Resolution such as the one challenged here is suitable subject-matter for constitutionality proceedings held under Article 161.2 CE and Articles 76 and 77 LOTC, as maintained by the State Attorney and refuted by the representative of the Parliament of Catalonia, was already resolved in STC 42/2014, of 25 March.

For a resolution adopted by an Autonomous Community to be challengeable through the aforementioned constitutionality proceedings, we established, in said judgment, that: it must be legal in nature; it must constitute an expression of the institutional intent of the Autonomous Community in question—that is, it must be issued by a body capable of expressing the Autonomous Community's intent and not be presented as a procedural measure within a larger process; and, finally, it must have, even if only circumstantially, the capacity to produce legal effects (Ground 2, citing ATC 135/2004, of 20 April).

Resolution 1/XI was issued by the Parliament, the Autonomous Community body which represents the people of Catalonia (Article 55.1 EAC), in the discharge of its statutory duty, i.e. to control and further political and governmental action (Article 55.2 EAC), through the parliamentary process established in the corresponding regulations (Articles 164 and 165

RPC). The Resolution therefore constitutes an act performed by the Parliament that, despite being clothed as a political act, also has an undeniable legal nature. Moreover, the Resolution represents the conclusion of a parliamentary process, as it constitutes a completed expression of the Parliament's determination to commence or open a specific political process, regardless of subsequent parliamentary control and any results of such control. It has, moreover, been issued by a body with the capacity to express the Autonomous Community's institutional intent.

Furthermore, the Resolution is capable of producing its own legal, not only political, effects, since, even if it could be understood as lacking of binding force over its intended targets (citizens, the Catalan Parliament and Government, and the other institutions of the Autonomous Community), "having a legal nature", as we maintained in STC 42/2014 (Ground 2), "does not stop having binding force". Firstly, since the challenged Resolution "solemnly declares the beginning of the process to create an independent Catalan State in the form of a republic", and "proclaims the opening of a … constituent process to lay the foundations for the future Catalan constitution", within an announced framework of "uncoupling" from the Spanish state, it is capable of producing legal effects, as these statements could be understood as the acknowledgement that the bodies and entities which the Resolution entrusts with carrying out these processes —the Parliament and the Government of the Autonomous Community in particular— have "powers inherent to sovereignty that go above and beyond the powers derived from the autonomy afforded by the Constitution to the different nationalities that make up the Spanish nation" (STC 42/2014, Ground 2). Among other instances, this recognition is, in this case, notable in the Parliament of Catalonia's recognition of itself as "(the depositary of sovereignty and the expression of the constituent power" (paragraph six).

Secondly, the declaratory nature of the Resolution, in that it proclaims the immediate opening of a constituent process aimed at the creation of an independent Catalan state in the form of a republic, "does not permit us to construe its effects in the parliamentary sphere as being limited to strictly political matters, as it demands that certain actions be taken, the performance of which may be subject to the parliamentary control process in place for resolutions adopted by the Parliament (Article 165 RPC)" (STC 42/2014, Ground 2).

To sum up, just as we concluded in STC 42/2014 with regard to Resolution 5/X, adopted by the Parliament of Catalonia on 23 January 2013, passing a declaration of sovereignty and the Catalan people's right to decide, we must also now concede that the challenged Resolution, its markedly political nature notwithstanding, has the capacity to produce effects of a legal nature, so it can be deemed suitable subject-matter for these constitutionality proceedings.

3. The action pleadings challenge the Resolution "in its entirety", reproaching it for breaching the constitutional and statutory provisions listed under point 1 above, as well as the principles of constitutional loyalty and fidelity to the Constitution (STC 25/1981, of 14 July, Ground 3; STC 18/1982, of 4 May; STC 11/1986, of 28 January, Ground 5; STC 239/2002, of

11 December, Ground 11; and STC 13/2007, of 18 January, Ground 7). The pleadings argue that constitutional loyalty must be understood as acquiescing to the Constitution's pre-eminence, which does not mean one has to agree with the Constitution ideologically; however, it does mean respecting the political rules of the game and the existing legal order, and refraining from attempting to transform these by illegal means. The pleadings contend that the Resolution disrespects the "system of distribution of powers" between the State and the Autonomous Community of Catalonia. This last censure is, above all, aimed at paragraphs five and eight of the main body of the Resolution and its Appendix. As regards the violation of Articles 1, 2 and 9.1 CE (Preliminary Title), the State Attorney understands this is a case of "radical unconstitutionality", of equally "radical" "insubordination" to the Constitution, and of a "unilateral split from the constitutional order". On the basis of all of these statements, the State Attorney complains that the challenged Resolution represents, "decisions that constitute, more than just a specific breach of a constitutional rule, the repudiation of the Constitution's essential clauses" and "the establishment of a principle of legitimacy that is in absolute contradiction with it".

On the basis of the foregoing, it is now necessary to examine the constitutionality of the challenged Resolution, which will be judged bearing in mind that the Resolution, throughout its various paragraphs, pursues an unequivocal aim and displays an indisputable unity of meaning. Each of the successive paragraphs and their final Appendix are presented as the materialization and development of a single plan, which the challenged Resolution promotes in its entirety. The Court deems the challenged parliamentary Resolution to constitute a whole that must be judged as such, in light of its various statements.

In STC 42/2014, this Court acknowledged that, from the wording of some of the "principles" included in the document challenged in that particular case—the "declaration of sovereignty and the Catalan people's right to decide" (it was precisely this reference to "sovereignty" that was rejected on the grounds of unconstitutionality)—the disputed Declaration could not be understood as precluding "the constitutionally established channels from being followed to make the political intent expressed in the Resolution a legal reality" (Ground 3). This, once the principles had been examined, meant that the purported "right to decide" could be interpreted in a way that did not contradict the Constitution, i.e. as an "aspiration that could be politically defended within the framework of the Constitution" (Ground 4 c). In an identical line of reasoning, in relation to the term "the people of Catalonia", from whom, as per Article 2.4 EAC, "the powers of the Catalan Government" emanate, this Court maintained that the people of Catalonia do not constitute a "legal entity entitled to compete with the holder of the national sovereignty which was exercised to establish the Constitution that, in turn, gave rise to the existence of the Statute that constitutes the basic institutional legislation governing the Autonomous Community". In other words, '"the citizens of Catalonia cannot be confused with the sovereign people, conceived as 'the ideal unit to which allocate constituent power, and, as such, the source of the Constitution and the legal system" (STC 12/2008, Ground10)' (STC 31/2010, Grounds 9 and 11).

It is worth reiterating, at this point, that a political aspiration of this kind can indeed be defended without violating the Constitution and, in particular, with respect for the formal revision procedures in place. It is no less evident that —unlike what was assented for some of the passages of the Resolution judged in STC 42/2014— the challenged Resolution in this case allows to be understood that the Parliament of Catalonia, in adopting said Resolution, precludes the use of constitutional channels (Article 168 CE), in transforming what is currently the Autonomous Community of Catalonia into an "independent … state" (paragraph two). The Parliament, indeed, "proclaims the opening of a … constituent process to lay the foundations for the future Catalan constitution" (paragraph three); undertakes to process, among other legislation, a law on the "constituent process" by a specified date (paragraph five); and therefore claims to be "the depositary of sovereignty" and to constitute the "expression of the constituent power", which, in the process being embarked upon, will not be subordinated to the decisions of the institutions of the Spanish State, and, in particular, those of this Constitutional Court (paragraph six); finally, it urges the "future Catalan government" "to comply exclusively with those rules and mandates emanating from this … Chamber" (paragraph eight).

The clear specific meaning behind declarations as categorical as those cited above calls for a legal and constitutional assessment that is also all-encompassing, considering all of the declarations as a whole, without leaving out the Appendix attached to the Resolution. This is not a question of the constitutionality of the "measures" announced or projected in the terms stated in the nine points of said Appendix. The matter of legal and constitutional importance here is that said "measures"—each and every one of them—are demanded to the "future … government", on the basis of the Parliament's self-proclamation as the holder of "sovereignty" and expression of "constituent power" (paragraph six), and, more specifically, with the meaning and in the terms of the assertion made in paragraph eight: "the Parliament of Catalonia urges the future Catalan government to comply exclusively with those rules and mandates emanating from this legitimate and democratic Chamber in order to safeguard fundamental rights, such as those specified in the Appendix to this Resolution, which may be affected by decisions of the institutions of the Spanish State". It is, therefore, clear that the Appendix and the main body of the Resolution make up a single integrated unit. Obvious, too, is the fact that the assignment of these "measures" to the "future government" is performed from a resolute position of disregard for the constitutional order, and with the expectation that the Catalan Government will act accordingly.

4. From a reading of Resolution 1/XI, it is unequivocally inferred that said Resolution is considered the founding act of a "process to create an independent Catalan State in the form of a republic" (paragraph two) and, to this end, it makes use of language that seeks to be substantially "constitutional" (the future "constitution" in paragraph three, or "sovereignty" and "constituent power" in paragraph six). These terms, however, appear in the Spanish Constitution and in this Court's case law.

a) The "Constitution's pre-eminence as the supreme statute" (STC 54/1983, of 21 June, Ground 2, and, for an even earlier instance, STC 16/1982, of 28 April, Ground 1), as

expressly declared by Article 9.1 CE, relates to the fact that the Constitution itself is the result of the sovereign nation's determination, by way of a single entity, the Spanish people, in whom such sovereignty is vested, and from whom the powers of the State therefore emanate (Article 1.2 CE). This has to be conceived as the entire array of institutions and bodies that exercise public powers throughout the entire territory of Spain, so it therefore also includes the Autonomous Communities (STC 35/1982, of 14 June, Ground 2, and many subsequent decisions in the same vein).

The sovereignty of the nation, vested in the Spanish people, necessarily entails the unity of the nation, proclaimed, as is well known, by Article 2 CE, pursuant to which the Constitution itself "is based on the indissoluble unity of the Spanish Nation, the common and indivisible country of all Spaniards; it recognizes and guarantees the right to autonomy of the nationalities and regions of which it is composed, and solidarity amongst them all". This unity of the sovereign entity is the basis of a Constitution through which the nation itself is, in turn, constituted as a social, democratic and rule-of-law-based State (Article 1.1 CE and, *inter alia*, STC 4/1981, of 2 February, Ground 3). Therefore the State is also common to everyone throughout the national territory, notwithstanding that it is also a complex, compound unit thanks to the territorial autonomy (STC 247/2007, of 12 December, Ground 4a) conferred by the Constitution on the different nationalities and regions that, in the form of Autonomous Communities governed by their respective Statutes, make up Spain (the principle of the unity of the State, also inferable from Article 2 CE: STC 29/1986, of 20 February, Ground 4; and STC 177/1990, of 15 November, Ground 3).

Article 1.2 CE is thus the basis of our entire legal system (STC 42/2014, Ground 3, and the case law cited therein), so, as it was said in the cited doctrine "if in the present constitutional system sovereignty is vested in the Spanish people and the Spanish people alone, exclusively and indivisibly, no public authority can attribute sovereignty to any other entity or body of the State, or to any fraction of the Spanish people. Any act by a public authority that attributes legal entitlement to sovereignty to the people of an Autonomous Community must always constitute a concurrent repudiation of national sovereignty, which, pursuant to the Constitution, rests solely with the Spanish people as a whole. Entitlement to sovereignty cannot, therefore, be attributed to any fraction or part of the Spanish people."

b) As we highlighted in STC 42/2014, "as a social and historical reality, Catalonia (and all of Spain) dates back before the Constitution of 1978" (Ground 3). From a legal perspective, Article 1 EAC defines Catalonia's position in the current constitutional framework, setting forth that "Catalonia, being a nationality, exercises self-government as an Autonomous Community in accordance with the Constitution and the present Statute, which is its basic institutional legislation". This Court has judged that the declaration set forth in the cited Article allocates to Catalonia, "in constitutionally impeccable terms … the attributes that make it an integral part of the State founded in the Constitution, and a nationality established as an Autonomous Community, whose basic institutional legislation is its own Statute of Autonomy". The Constitution is not, therefore, presented as the "result of a pact between historical territorial institutions which retain certain rights that predate" it (STC 76/1988, of

26 April, Ground 3; and STC 247/2007, Ground 4 a), but rather as the legal text that cannot be conditioned by, but which itself conditions, all other texts in our legal system. It is a superior statute to which all—citizens and public authorities alike—are subject (Article 9.1 CE).

As a result, the holders of public office are bound by an inescapable duty to abide by said fundamental statute. This does not necessarily mean defending its entire content from an ideological standpoint; however, it does mean undertaking to perform one's duties in accordance with the Constitution and with respect for the rest of the legal system (in this regard, see, *inter alia*, STC 101/1983, of 18 November, Ground 3; and STC 122/1983, of 16 December, Ground 5). The fact that this is the case for all public authorities indisputably arises from our State's being constitutional and based on the rule of law.

To say that *everyone* is subject to the Constitution is just another way of acquiescing to the determination of the people expressed as a "constituent power" (STC 108/1986, of 29 July, Ground 18; and STC 238/2012, of 13 December, Ground 6 b). In the constitutional State, the principle of democracy cannot be detached from the unconditional supremacy of the Constitution, which, as this Court maintained in STC 42/2014, Ground 4 c, "means that all decisions by public authorities must remain, without exception, subject to the Constitution, and the public authorities do not have any Constitution-free areas or windows of immunity".

To guarantee that this is the case, we have the legal system in place in our constitutional rule-of-law-based State—the public authorities, but also the citizens themselves—and, in the last instance, when necessary, this Constitutional Court. "In its duty as supreme interpreter of the Constitution (Article 1 LOTC)", it is this Court's duty "to safeguard the permanent distinction between the objectivization of the constituent power and the actions of the constitutionally instated powers, which may never overstep the limits and powers established by the former" (STC 76/1983, of 5 August, Ground 4).

5. The challenged Resolution sets the purported scope of the "democratic mandate" received by the Parliament of Catalonia at the 27 September 2015 elections (paragraphs one and nine) or the "legitimate and democratic" status attributed to the Parliament accordingly (paragraph eight) at odds with the legality and legitimacy of the institutions of the State, this Constitutional Court in particular, which is directly considered "devoid of legitimacy and jurisdiction". The aforementioned "democratic mandate" would justify the announcement that the decisions taken by the Parliament of Catalonia "will not be subject" to those adopted by the institutions of the State as a whole, as well as for opening a "non-subordinated"—i.e. unilateral—constituent process which claims to be "citizen-led, participative, open, inclusive, and active". In its defence pleadings, the Parliament of Catalonia reiterates that this Resolution "is directly supported by the fundamental principles of democracy and political pluralism".

Resolution 1/XI seeks, in short, justification through the democratic legitimacy of the Parliament of Catalonia, a principle whose formulation and consequences are in absolute discord with the Constitution of 1978 and the Statute of Autonomy of Catalonia. This not only

disrupts the notion of the State based on the rule of law and on the utmost deference to legislation and the law, but also the democratic legitimacy of the Parliament of Catalonia, recognized and protected by the Constitution.

In the social, democratic and rule-of-law-based State founded by the 1978 Constitution, democratic legitimacy cannot be placed at odds with constitutional lawfulness to the detriment of the latter: the legitimacy of an action or policy of a public authority basically lies in whether it complies with the Constitution and the legal system. If one does not obey the Constitution, one cannot claim any legitimacy whatsoever. In a democratic conception of power, there is no other legitimacy than that established in the Constitution.

Additionally, the principle of democracy —one of the highest values of our legal system set forth in Article 1.1 CE (STC 204/2011, of 15 December, Ground 8), and of which there are many constitutional manifestations (STC 42/2014, Ground 4 a)— being a constitutional principle, cannot be construed in isolation from the rest of the constitutional system and its processes. As we will now go on to explain, the unconditional supremacy of the Constitution is what safeguards democracy, in that it is a source of legitimacy, due to its content, and because it contains procedures for its reform.

a) As a source of legitimacy, the Spanish Constitution set the will of the constituent power. The sovereign people, conceived as the ideal entity for attributing constituent power, confirmed, by referendum, the text that had been previously agreed on by their political representatives. The Constitution's unconditional supremacy also safeguards the principle of democracy, "so guaranteeing the entirety of the Constitution must, in turn, be seen as preserving due respect for the will of the people, as expressed through the constituent power, which is the source of all legal and political legitimacy" (STC 42/2014, Ground 4 c). It is, therefore, this Court's mission to safeguard the Constitution's unconditional supremacy, which is nothing more than another way of acquiescing to the will of the people expressed as a constituent power (STC 108/1986, of 29 July, Ground 18).

b) Turning to its content, the Constitution is based on respect for the values of human dignity, freedom, equality, justice, political pluralism, democracy, the rule of law, and fundamental rights. The principle of democracy, as a constitutional principle, must, therefore, be interpreted within the scope of the entire constitutional system and its processes (electoral rules, rules of procedure, fundamental rights, the protection of minorities and constitutional reform, to cite some of the most important). For the purposes of the present case, it is worth placing particular emphasis on how the principle of democracy relates to two of the predominant traits of our constitutional State: political pluralism and territorial pluralism.

Among the higher values defended by the Constitution of 1978 is indeed the value of political pluralism, a cornerstone of our system of co-existence and a principle on which the Parliament of Catalonia relies in its pleadings as grounds for the challenged Resolution. Just like the other constitutional values and principles, political pluralism is a value set forth in positive law. It is nourished by —and consists of— inalienable contents and procedures which are, at the same time, pre-agreed conditions and requisites. The Constitution proclaims a

minimum content and establishes a number of inescapable rules of the game for citizens and public authorities. Therefore, when this Court exercises the control of the constitutionality of statutes and acts as mandated by its Organic Law, it must not impose undue restraints on the principle of democracy expressed using constitutional channels, and it must respect political options (STC 108/1986, Ground 18). This minimum constitutional framework holds the political community together within the parameters of political pluralism. What characterizes democracy is the fact that decisions are constantly being taken, and options turned down in the past for whatever reason are always available. All of this gives evolutionary capacity to the pluralist constitutionalism that is characteristic of our social, democratic, rule-of-law-based State.

Political pluralism is not, after all, restricted to the manifold expressions of pluralism protected by the Constitution. Leaving aside for the moment the linguistic and cultural pluralism that the Constitution also protects (Preamble, Article 3.2 and 3.3; Article 148.1.17 and the Single Final Provision CE), attention must be drawn to the structuring dimension of a constitutional State that affords constitutionally recognized autonomy to the nationalities and regions.

The indissoluble unity of the Spanish nation proclaimed by Article 2 CE is coupled with the recognition of nationalities' and regions' right to autonomy. The right to autonomy is similarly proclaimed as part of the very core of the Constitution, together with the principle of unity. Through the exercising of that right, the Constitution guarantees the Autonomous Communities' capacity to adopt their own policies within the constitutional and statutory framework. It is the Constitution itself that obliges us to reconcile the principles of unity and of autonomy of the nationalities and regions —principles which, naturally, are also duly set forth in the Statute of Autonomy of Catalonia: "Catalonia, being a nationality, exercises self-government as an Autonomous Community in accordance with the Constitution and the present Statute, which is its basic institutional legislation" (Article 1 EAC).

c) Precisely because the rule-of-law-based State is based on the principle of democracy, and as a result of safeguarding democracy itself via the rule of law, the Constitution is not an intangible or unchangeable legal text. In providing for constitutional reform, as will be expanded on further below, it recognizes and channels aspirations—fully legitimate within the constitutional framework—that seek the revision and amendment of the Constitution as established in Articles 167 and 168 CE.

From all of the foregoing it can be inferred that the alleged democratic legitimacy of a legislative body cannot be set at odds with the unconditional supremacy of the Constitution. The text of the Constitution reflects the pertinent manifestations of the principle of democracy, which cannot, therefore, be exercised beyond the bounds of the Constitution (STC 42/2014, Ground 4 a). Therefore, the legal system, with the Constitution at its pinnacle, cannot, under any circumstances, be considered a limit to democracy, but rather as the very thing that guarantees it.

6. As established by this Court, accepting "Catalonia as a legal entity in the terms set forth in Article 1 of its own Statute of Autonomy naturally implies acknowledging the entire legal universe created by the Constitution, the only universe in which the Autonomous Community of Catalonia has any legal meaning. More specifically, this means that it is obvious that Catalonia's Statute of Autonomy, based on the Spanish Constitution, accepts, by logical derivation, the Constitution's self-proclaimed basis—i.e. 'the indissoluble unity of the Spanish nation' (Article 2 CE)—while at the same time recognizing that sovereignty rests with the Spanish people (Article 1.2 CE), whose intent is set forth in the positive law handed down by the constituent power" (STC 31/2010, of 28 June, Ground 8).

The challenged Resolution displays an ignorance of and violates the constitutional provisions which vest national sovereignty in the Spanish people and which, accordingly, proclaim the unity of the Spanish nation, the holder of this sovereignty (Articles 1.2 and 2 CE). This violation of the Constitution 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 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.

7. The Constitution, as our supreme statute, does not claim that its provisions are set in stone, but rather permits its full revision (Article 168 CE and STC 48/2003, of 12 March, Ground7). It thus assures 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 itself without restrictions" (STC 103/2008, of 11 September, Ground 2). Each and every constitutional provision is amendable, provided that the amendment "is not prepared or defended through an activity that infringes the principles of democracy, fundamental rights or the rest of the constitutional mandates". Rather, "the attempt to achieve this" must be "effectively performed within the procedural framework for constitutional reform, as respect for these procedures is always mandatory" (STC 138/2015, of 11 June, Ground 4, and case law cited therein).

The Constitution is entirely open to formal revision, which can be requested or proposed by, among other authorities of the State, the assemblies of the Autonomous Communities (Article 87.2 and 166 CE), as this Court had reason to reaffirm a little over a year and a half ago in STC 42/2014 (Grounds 3 and 4), on its examination of the constitutionality of Resolution 5/X, adopted by the Parliament of Catalonia on 23 January 2013. This means that there is the broadest possible freedom to publicly state and defend ideological notions, including 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 to—through the corresponding, unavoidable reform of the Constitution—make this notion a legal reality" (STC 31/2010, of 28 June, Ground 12). Public debate, whether within or outside the institutions, on such political projects or any others that advocate constitutional

reform is, precisely under the protection of the Constitution itself, afforded unconditional freedom. However, converting these projects into legislation or other manifestations of the public authority's intent 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.

The Parliament of Catalonia has chosen to use the specific parliamentary procedure in place for drafting parliamentary decisions to pass Resolution 1/XI, whose content has a direct impact, as has already been demonstrated, on matters whose institutional processing is restricted to the constitutional reform procedure set forth in Article 168 CE, which must also be considered to have been violated, since the constitutionally established channel for seeking a redefinition of the constitutional order, such as that intended by that Resolution, was not followed.

An Autonomous Community's Parliament cannot set itself up as a source of legal and political legitimacy, unlawfully taking matters into its own hands in order to violate the constitutional system on which its own authority is based. In doing so, the Parliament of Catalonia would be undermining its own constitutional and statutory foundations (Articles 1 and 2.4 EAC cited above) by unilaterally withdrawing from any requirement to obey the Constitution and the rest of the legal system, and would be breaching the foundations of the rule-of-law State and the precept that everyone is subject to the Constitution (Articles 1.1 and 9.1 CE). This Court already ruled in STC 103/2008 that respect for the procedures of constitutional reform is mandatory, so "to attempt to dodge, evade or simply forego these procedures is to attempt to go down an unacceptable *de facto* route (incompatible with the social, democratic, rule-of-law-based State proclaimed in Article 1.1 CE) in order to reform the Constitution without respecting its terms or to achieve its practical unenforceability" (Ground 4). This is what is actually reflected in Resolution 1/XI, whose legal appearance—due to being issued by an authority about which there are no legitimate doubts at source—must be hereby annulled through a declaration of unconstitutionality.

As we made clear in STC 42/2014 (Ground 4), there is room in our system for ideas to be put forward that seek to modify the foundations of our constitutional order, provided that this is not prepared or defended by way of an activity that violates the principles of democracy, fundamental rights or any other constitutional mandates, and provided that the attempt to achieve this is made through the established constitutional reform procedures. However, unilaterally attempting to alter the content of the Constitution, deliberately ignoring the procedures expressly set forth for this purpose therein, means abandoning the only path that leads to this outcome —the path of the law.

As we have established the unconstitutionality of the challenged Resolution as a result of violating Articles 1.1, 1.2, 2, 9.1 and 168 CE, as well as Articles 1 and 2.4 EAC, it is not necessary to make any additional declaration on the other constitutional violations that the action pleadings attribute to the Resolution.

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 action lodged by the Government Counsel, in representation of the Government of the Nation, against Resolution 1/XI, of the Parliament of Catalonia, adopted on 9 November 2015 (published in the BOPC on the same date) "on the beginning of the political process in Catalonia arising from the election results of 27 September 2015", and its Appendix, and thus to declare said Resolution to be unconstitutional and null.

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

Handed down in Madrid, this second day of December, two thousand and fifteen.