SEVEN QUESTIONS AND ONE CONCLUSION REGARDING THE JUDGMENT OF THE CONSTITUTIONAL COURT ON THE ENFORCEMENT OF ITS RESOLUTIONS

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1. Refusal of the control over resorting to single-reading procedures. According to the Congress Regulation, the two factors are reduced to a minimum ("simplicity" to mere intelligibility) or even inexistent content (the appropriate "nature" can be any nature as considered by the Congress). Meanwhile, the core aspect, object of partial amendments in the stages of Committees (comisiones) and Reporting Subcommittees (ponencias) which would allow for a more intense control of an increasingly controversial matter in our Parliaments, is ignored.

2. Rejection of the disciplinary nature of the measures aimed at suspending public authorities from duty (including the implementation of the safeguards laid down by Article 25 of the Constitution). This rejection is based on two elements: targeting the measure (be it exclusively or not) towards its fulfilment and its temporary nature. The Constitutional Court restricts the suspension to "the necessary capacities for the fulfilment of the duty", aspect not laid down by the law, and mentions the right of defense of those affected by the decision. The dissenting opinions reach different conclusions based on the ECHR jurisprudence. Judge Xiol wisely questions the adequacy and limits of the suspension in order to achieve the alleged fulfilment of the duty when the object is a negative personal obligation. Conversely, the judgment carefully avoids considering the consequences of suspension and the resulting substitution of the public authority. The Court also takes the dubiously commendable decision to judge the constitutionality of the measures without examining their content. This decision probably backs the "abstraction" of the whole proceeding as mentioned by the Court (see below) but it is not convincing enough.

3. Blindness to the position of the suspended authorities. The Court does not consider the fact that they have been elected, their constitutional functions or their immunity. The general and binding effects of the Court's judgments are enough to exclude any kind of restriction, which is surprising given the long statements made by the appellant. However, the reference to a proportionality analysis in future decisions (see below) opens a door to this consideration.

4. The difference with enforcement as laid down by Article 155 of the Constitution. The position of the Court in the political system.The Court does not make an exception to the suspension of authorities in favor of Article 155 because the cause of this procedure (a politically verified breach of duty) does not coincide with that of the procedure now being examined (a judgment). On the other hand, the Court does not say a word about the changes that this entails in the Court's own position, which is considered similar to an impeachment by some, regardless of its previous statement that the legislator is limited by the "model of Constitutional Court derived (…) from our Constitution and the constitutional principles included therein" (Judgment 49/2008) – while the Court highlights this point in Legal Basis No. 3, it seems to forget about it in the rest of the judgment.

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5. The need to ensure fulfilment of the Court's judgments. According to the Constitutional Court, the court delivering judgment necessarily has to comply with this duty too (Legal Basis No. 9). This is an apodictic statement that collides with the previous wording of the Law on the Constitutional Court, with comparative law and with the reality of ordinary courts. It is undoubted that the judicial nature of judgments requires their fulfilment and legal safeguards, although greater accuracy in the definition of the terms fulfilment (cumplimiento), safeguards (garantías) and enforcement (ejecución) would be desirable. Another different matter is whether the court delivering judgment is necessarily the one in charge of offering the safeguards and whether these safeguards also include the suspension of public authorities. Although this option might be defended in terms of possibility (which would demand reasoning and analyzing effects and alternatives), it can hardly be imposed in terms of necessity (and, consequently, with no reasoning or alternative).

6. The abstract configuration of the appeal and the reference to future precision. The Constitutional Court repeatedly insists on the abstract nature of its analysis so as to avoid examining the effects and adequacy of the measures with respect to the different proceedings in which these can be implemented. As a consequence, the text includes frequent references to future precisions about their limits and conditions of adequacy and proportionality. The dissenting opinions describe this circumstance as a lack of willingness to exercise the corresponding control. Nevertheless, this decision suggests a complicated future for the measures.

7. The reasoning of the judgments. The Court repeatedly mentions the generic nature of the appellant's reasoning. After reading the judgment, though, it can be affirmed that it is the judgment itself which clearly lacks reasoning. In fact, the dissenting opinions severely criticize this circumstance in an unprecedented manner in the history of the Constitutional Court. While the judgment places so much emphasis on the enforcement means as an element that is inherent in the jurisdiction, it would have been sensible to remember that the reasoning of a judgment and the consistency with the appellant's arguments is a much more intrinsic need.

As a conclusion, this is what the show looks like: hardly "abstract" and closely linked to the very specific discussion about the future of Catalonia. Now the Constitutional Court has written a new act, which should be construed as a way of reaffirming its authority and position, fostered by the legislator and characterized by the willingness to channel the conflict through the courts. On the other hand, it should also be construed as a reference to future particular cases, whose control will opt for the less burdensome safeguard measures.

In light of the Constitutional Court's scarce arguments, numerous silences and categorical tone, while the Court's response might save the new capacities to safeguard its judgments' fulfillment and enforcement, it rather worsens its crisis of auctoritas. The judgment, just like the Law, might satisfy those caring about the formal need of safeguard mechanisms. But it hardly satisfies those caring about the respect for and effective fulfillment of resolutions.

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