

**CONCLUSIONS ON THE CONSTITUTIONALITY AND VIOLATION OF FUNDAMENTAL HUMAN RIGHTS OF MEASURES APPLIED IN CATALONIA BY THE SPANISH GOVERNMENT, PURSUANT TO ARTICLE 155 OF THE SPANISH CONSTITUTION (hereafter SC)**

EVENT HELD AT THE BAR ASSOCIATION OF BARCELONA, ORGANIZED BY THE ASSOCIATION'S DEFENCE COMMITTEE AND THE PRAGA COLLECTIVE

**The measures adopted and applied to the Government of Catalonia by the Spanish Government led by the Partido Popular (Popular Party), with the support of the PSOE (Spanish Socialist Party) and Ciudadanos (Citizens' Party), and approved by the Spanish Senate, are unconstitutional on the following grounds:**

**FIRST:** The prior request made by the Government of the Popular Party to the Government of Catalonia (the Generalitat) violates Article 155 insofar as it fails to state which Constitutional obligations are claimed not to be complied with, and fails to define either the framework or the legitimate purpose of the measures that were intended to be adopted.

**SECOND.-** The procedure by which the Spanish Senate approved Article 155 is unconstitutional: the Senate failed to uphold its constitutional supervision role, in that the measures proposed and ultimately approved are over-broad and leave future decisions to the discretion of the Spanish Government.

**THIRD.-** The measures adopted by the Spanish Government fail to adhere to the legal principles of specificity, necessity, appropriateness and proportionality and therefore fail to comply with the aims stipulated in the text of the said Article 155 SC, which permits only the measures required to enforce compliance with constitutional obligations not complied with or to protect the general interest.

**FOURTH.-** Article 155 SC does not allow for the replacement of the Catalan authorities, nor the removal of their competences and functions. The measures provided for in Article 155 are exclusively for implementation, and must be adopted and applied in a restrictive way, never in the overly broad and expansive manner that is being witnessed.

**FIFTH.-** Autonomy, understood as the political and legal running of the Catalan people, cannot be transferred to the Spanish Government; to do so amounts to the violation of Articles 2 and 152.2 SC, which reserve any modification of the statutory status to the procedures established therein; as a consequence, it is also contrary to the constitutional distribution of powers between different branches of government.

It is thereby held that:

- a) The arbitrary dismissal of the President, Vice President and the Government of the Generalitat cannot be justified by Article 155 SC and is contrary to Articles 2 SC and 152.2.SC regarding the constitutional distribution of powers, and to Articles 66 and 67 of the Statute of Autonomy of Catalonia.
- b) Under no circumstances - even under the application of Article 155 SC -, can the unique power of the President of the Generalitat to dissolve Parliament and call elections be transferred to the Spanish Government. Therefore, the imposed dissolution of the Catalan Parliament violates Articles 2 and 152 of the Spanish Constitution and Articles 55, 73, 74 and 75 of the Statute of Autonomy of Catalonia.
- c) The Administration of the Government of Catalonia has been arbitrarily seized by the Spanish Government, without any specification of the measures, or their scope and extent, without any specification of which administrative acts are to be replaced by the Spanish Government. This has entailed a broad and arbitrary replacement of the entire Catalan

administration and violates Article 143 of the Statute of Autonomy as regards its Articles 1, 2 and 71.

- d) The complete intervention of the Spanish Government over the Government of Catalonia's finances is a violation of Article 2 SC, of the constitutional distribution of powers and of Articles 201 and 202 of the Statute of Autonomy.
- e) The abolition of offices, posts and committees of the Government of Catalonia is contrary to Article 2 SC, to the constitutional distribution of powers, and to Article 143 of the Statute of Autonomy as regards its Articles 1, 2 and 71. It is worth highlighting that the ad hoc committee to investigate potential violations of fundamental rights which took place on October 1st in polling stations has also been abolished.

**The measures adopted and applied in Catalonia by the Spanish Government violate the following fundamental rights:**

**FIRST:** The fundamental right to political participation of the citizens of Catalonia, established in article 23.1 SC, and of access under equal conditions to the functions and public posts of the members of the Parliament of Catalonia, regulated in the second paragraph of the same clause. The dissolution of the Parliament of Catalonia was effected by a government not legitimately authorized to do so.

This measure also violates Article 21 of the Universal Declaration of Human Rights, Article 25 of the International Covenant on Civil and Political Rights, and Article 3 of the European Convention on Human Rights.

**SECOND:** The application of Article 155 SC and the obligation to comply with and loyally adhere to said Constitution amount to the violation of the fundamental rights of freedom of thought and the freedom of speech guaranteed in Article 20 SC. Ultimately, they entail the violation of the right of dissent.

**THIRD:** Though not directly authorized under the scope of Article 155 SC, but rather a parallel action of the Spanish State, attention needs to be drawn to the violations of fundamental rights in bringing criminal proceedings against two leaders of organizations of Catalan civil society (ANC and Omnium), members of the Bureau of the Parliament of Catalonia, the members of the Government of Catalonia and the heads of the *Mossos d'Esquadra* (the Catalan police force): the Chief Superintendent and the Deputy Superintendent. In these criminal procedures the principle of legality is being violated, inasmuch as the criminal charges of rebellion and sedition are unjustifiably broad, the principle of proportionality is violated because there is insufficient justification for pre-trial detention and, finally, the fundamental right to be heard in a court with the appropriate jurisdiction, the cases having first been attributed to the National "Audiencia" court and then to the Supreme Court.

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