

STATEMENT BY THE CATALAN OMBUDSMAN

On October 27th, after the approval of two resolutions in the Parliament of Catalonia, clearly outside the constitutional framework with the alleged declaration of independence, the Senate Plenary authorized a broad following of measures regarding the Government in application of Article 155 of the Spanish Constitution (SC). From here, the prime minister of Spain has adopted several royal decrees that include the cessation of the president, the vice president and the directors of the Government of Catalonia, as well as other senior officials of the Government, and the dissolution of the Parliament of Catalonia. This dissolution brings together the call for autonomous elections for December 21st this year. The State Attorney General has also raised before the Supreme Court and the National High Court criminal complaints against the members of the Government of Catalonia and against the Bureau of Parliament, which have been admitted by both courts.

In this context, the Catalan Ombudsman reiterates that the conflict that has been posed for years between the Catalan and Spanish institutions, manifested in a growing and peaceful manner by a very important part of the citizens of Catalonia and debated in the institutions of Catalonia and in the whole of the society with serenity, has an essentially political dimension and should be resolved through the political, institutional, legal, agreements, proposals of reforms of the basic regulation, with consultations to the citizens and with gestures of understanding. And it can still be solved by political and sincere and loyal dialogue, with a generous interpretation of the legal framework and with respect to the fundamental rights provided for in the international treaties, in force also in Spain.

The application of Article 155 of the Spanish Constitution

The Constitutional Court's action suspending or declaring unconstitutional laws passed by the Catalan Parliament or subsequent statements shows that there are legal measures within the current order to guarantee compliance with the constitutional order more

adequate than the use of Article 155 SC. Besides not having explicitly set a temporary limit of validity, the measures adopted by the Spanish State could violate the fundamental right to political participation of all citizens of Catalonia, recognized in Articles 23 SC and 3 of the additional Protocol to the European Convention on Human Rights. These precepts establish:

"Citizens have the right to participate in public affairs, directly or through representatives freely elected in periodic elections by universal suffrage" (art. 23 CE)

"The High Contracting Parties undertake to organize, at reasonable intervals, free elections with secret scrutiny, under conditions that guarantee the free expression of the opinion of the people in the election of the legislative body" (art. 3 Additional Protocol)

The exercise of the parliamentary mandate of the elected positions is protected by the jurisprudence of the European Court of Human Rights in application of this last precept and, from this point of view, the dismissal of the Catalan Government violates the right to political participation of all the citizens of Catalonia, regardless of the options they voted for in the elections of September 2015. This is the case in which this removal occurs with a possible transgression of the Spanish legal system itself, since no provision of the Spanish Constitution, included Article 155, does not provide for such a measure to be adopted.

This resolution can be appealed by citizens, even in constitutional proceedings, by those who consider their right of participation to be violated. On the other hand, in the face of irregularities committed in the parliamentary headquarters that damage rights, parliamentarians have, as the Catalan Ombudsman has already stated, the specific remedy provided for in the Constitutional Court Law.

In addition, the interpretation made by the Senate and the Government of Article 155 seems contrary to other constitutional precepts. Decisions taken on the competence to dissolve the Parliament and call elections, as well as cease the President and the Government, may violate the right to autonomy recognized in Article 2 of the SC and the system developed in Title VIII. However, the elections called for

December 21 must be able to develop with all democratic guarantees and without any threat or warning in relation to their results. And, in any case, the Spanish Government should publicly commit itself to lifting the exceptional measures adopted once the new government of Catalonia is formed freely and according to the statutory provisions.

Furthermore, regardless of whether the suspension of the self-government of Catalonia can be considered an intrinsic violation of rights or not, the fact that the Administration of the Government of Catalonia is ruled remotely, by instances beyond the will expressed by citizens of Catalonia not responding to their legitimate representatives, can generate a risk of mismanagement and potential violations of rights.

The indictment of the dismissed Government and the Parliament's Bureau

All legal and institutional channels should prevail over the criminal path to resolve these issues. In this sense, the exposition of motives of the Organic Law of Modification of the Penal Code that decriminalized the convocation of illegal referendums, after affirming that this conduct does not have sufficient penal entity, expressly indicates that "in our order there are other forms of control of the legality different from the criminal one. Thus, the exercise of the powers to convene or promote consultations by those who do not have them legally attributed is perfectly controllable by means other than criminal. "

Therefore, with full respect for the independence of the judiciary, and underlining the need to always collaborate with it, it is important to point out the potential affectation to fundamental rights recognized in international treaties and in the SC through the admission of criminal complaints filed by the State Attorney General in the Supreme Court and National High Court.

In the first place, they can represent a violation of the right to the judge predetermined by Law, which should be the ordinary jurisdiction of

Catalonia, and first of all the Superior Court of Justice of Catalonia (TSJC).

Even so, it is surprising the disparity of criteria between the two instances, Supreme Court and National High Court , regarding the exercise of the right of defence and the application of precautionary measures.

Secondly, in the case of the members of the Bureau, it seems to be avoided, as already stated in the report submitted in April, the inviolability enjoyed by deputies in their parliamentary function, as it is, without a doubt , the admission to process, through voting, of resolution proposals.

Finally, the criminal qualification as rebellion proposed by the Public Prosecutor's Office and initially accepted by the highest jurisdictional authorities seems completely disproportionate to describe the facts of all known, as was also disproportionate the order of preventive imprisonment without bail imposed on Jordi Sànchez and Jordi Cuixart, which remains to this date despite the substantial modification of the circumstances in which that judicial decision was made. The precautionary measures of provisional prison now applied to dismissed ministers are another example of the disproportion of justice.

The jurisprudence of the Constitutional Court clearly states that articles 25.2 and 9.3 of the Constitution oblige to guarantee a principle of proportionality of penalties that does not seem to be respected in this case. Likewise, the retroactive the description by the criminal complaint of large demonstrations that have been exemplary because of their civility as intimidating may pose a serious risk of transgression of Article 21 SC, which recognizes the right to assembly and demonstration.

These violations of fundamental rights and public freedoms recognized in the Constitution and in the European Convention for the safeguarding of fundamental rights and public freedoms and in their additional protocols could end up in the European Court of Human Rights. Unfortunately, the most predictable Strasbourg pronouncements will come after a long time, when the violations of

rights are irreversible and the only possible reparation is the moral one or, depending on the cases, the economic one. The Catalan Ombudsman urge the different powers to revert from the beginning these situations that violate rights and freedoms to avoid, as repeatedly happened, that the highest European jurisdictional body on human rights condemn the Spanish State for violations of human rights internal and international norms for violation of human rights.

The Catalan Ombudsman already warned in the report about the regression of rights and freedoms, following the warnings received from European authorities, about the threats to rights in the use of the criminal solution for institutional political conflicts and the partisans drifts in judicial bodies.

The Catalan Ombudsman will continue to watch out for violations of rights that may occur during the validity of this situation and will exercise its functions of investigation, supervision, study and report to all instances in all their extension.