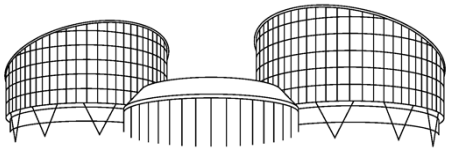

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

DECISION

Application no. 29780/20
Josep COSTA I ROSSELLÓ against Spain
and 3 other applications
(see list appended)

The European Court of Human Rights (Fifth Section), sitting on 11 February 2025 as a Chamber composed of:

Mattias Guyomar*, President*,
María Elósegui,
Armen Harutyunyan,
Stéphanie Mourou-Vikström,
Gilberto Felici,
Andreas Zünd,
Kateřina Šimáčková*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 29780/20, 33702/20, 48537/20 and 42224/22) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Josep Costa i Rosselló and 31 others, all of them Spanish nationals ("the applicants"), on the various dates indicated in the appended table;

the decision to give notice to the Spanish Government ("the Government") of the complaints concerning Articles 6, 10, 11 and 13 of the Convention, Article 3 of Protocol No. 1 to the Convention and Article 1 of Protocol No. 12 to the Convention;

the parties' observations;

Having deliberated, decides as follows:

INTRODUCTION

1. The case concerns decisions of the authorities in reaction to the repeated tabling for discussion and adoption, in the Parliament of Catalonia, of draft resolutions almost identical to ones that had previously been declared unconstitutional by the Constitutional Court. The applicants submit that the Spanish Constitutional Court, in the context of enforcement proceedings in respect of its previous judgments and decisions, prevented the holding of certain debates on questions of general interest, thereby infringing their rights. The first applicant complains, in addition, about the initiation of criminal proceedings against him for disobeying the Constitutional Court's decisions in his capacity of public official.

THE FACTS

2. The Government were represented by their Agents, Mr A. Brezmes Martínez de Villarreal and Mr L. Vacas Chalfoun.

3. Mr Josep Costa i Rosselló (hereinafter "the first applicant"), was a vice-president of the Bureau of the Parliament of Catalonia (hereinafter "the Bureau") from 17 January 2018 to 11 March 2021. He lodged the first and fourth applications.

4. Mr Eusebi Campdepadrós i Pucurull (hereinafter "the second applicant") was a secretary of the Bureau from 17 January 2018 to 11 March 2021. He lodged the second application.

5. All remaining applicants (application no. 48537/20) were at the relevant time deputies of the Parliament of Catalonia.

6. A list of the applicants is set out in the appendix.

7. The four applications are largely based on the same facts, which may be summarised as follows.

A. Relevant background

8. During the period from 2015 to 2019, the Parliament of Catalonia adopted several political resolutions contending that Catalonia had a right to become independent and criticising the response of the Spanish State to the will of the Catalan people to achieve a peaceful agreement on independence. The resolutions mentioned, *inter alia*, the need to guarantee the recognition of essential democratic principles and social, civil and political rights, especially the alleged right to self-determination in Catalonia.

9. In particular, on 9 November 2015 the Parliament of Catalonia adopted Resolution no. 1/XI on the initiation of the political process (the "*procès*") towards the independence of Catalonia as a State, separate from Spain, in the form of a republic. That Resolution, among other statements, established that the Parliament of Catalonia would not recognise the judicial decisions

adopted by the Constitutional Court of Spain, which, it considered, lacked legitimacy and jurisdiction. It also established that the Catalan Parliament would have to adopt the necessary measures in order to open that process of "disconnection" from the Spanish State. Some relevant excerpts from that Resolution stated as follows:

> "1. The Parliament of Catalonia notes that the democratic mandate obtained in the recent elections of 27 September 2015 is based on the majority of seats occupied by parliamentary forces whose objective is that Catalonia should become an independent State ...
>
> 2. The Parliament of Catalonia solemnly declares the start of the process to create an independent Catalan State in the form of a republic.
>
> 3. The Parliament of Catalonia proclaims the start of a civic, participative, open, inclusive and active constituent process to lay the foundation for the future Catalan Constitution.
>
> 4. The Parliament of Catalonia urges the future Catalan government to adopt the necessary measures to give effect to these declarations.
>
> 5. The Parliament of Catalonia considers it appropriate to begin within thirty days the passing of legislation on the constituent process, social security and public finances.
>
> 6. The Parliament of Catalonia, as the depositary of sovereignty and the expression of the constituent power, reiterates that this House and the process of democratic disconnection 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 ruling of June 2010 on the Statute of Autonomy of Catalonia previously voted on by the people in a referendum, among other rulings.
>
> 7. The Parliament of Catalonia shall adopt the necessary measures to begin this process of disconnection from the Spanish State in a democratic, massive, sustained and peaceful way, in order to empower citizens at every level, and on the basis of open, active and inclusive participation.
>
> 8. The Parliament of Catalonia urges the future Catalan government to comply exclusively with those rules and instructions emanating from this legitimate and democratic House in order to safeguard fundamental rights which may be affected by decisions of the institutions of the Spanish State, such as those specified in the annex to this Resolution.
>
> 9. The Parliament of Catalonia declares its will of initiating negotiations with a view to putting into effect the democratic mandate to create an independent Catalan State in the form of a republic, and agrees to inform the Spanish State, the European Union and the international community. ..."

10. The Spanish central government lodged a challenge against Resolution no. 1/XI of the Parliament of Catalonia with the Constitutional Court. By way of judgment no. 259/2015 of 2 December 2015, the Constitutional Court declared the impugned Resolution unconstitutional and null and void. It concluded that the Resolution contained statements concerning changes to the form of the State which would only be possible to implement following the procedures to revise the Constitution provided for in

the Constitution itself, which had not been followed. In that regard, it held as follows:

> "The challenged Resolution ignores 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 ... 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 requires 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 [on which basis] 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 ... 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' ... 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 any other 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' ... "

11. Following judgment no. 259/2015, the Parliament of Catalonia adopted a series of resolutions by which it sought to pursue the same goals as it had by the annulled Resolution no. 1/XI. The Spanish government initiated enforcement proceedings in respect of judgment no. 259/2015, requesting that the Constitutional Court also annul those new resolutions in the light of its previous ruling. The Constitutional Court granted those requests and annulled Resolutions nos. 5/XI and 236/XI (both of 20 January 2016) and no. 306/XI of 6 October 2016 by way of *autos* (reasoned decisions issued in the course of proceedings) nos. 141/2016 of 19 July 2016, 170/2016 of 6 October 2016, and no. 24/2017 of 14 February 2017, respectively.

12. On 6 and 8 September 2017 the Parliament of Catalonia passed two laws, one providing for the organisation of a referendum on the "self-determination" of Catalonia and another on the "legal transition and foundation" of a republic of Catalonia.

13. Those laws were suspended and later declared unconstitutional by the Spanish Constitutional Court, for both serious procedural breaches and direct contradiction of the Spanish Constitution and the Statute of Autonomy of Catalonia (*Estatuto de Autonomía*).

14. Notwithstanding the suspension of the laws, on 1 October 2017 the unconstitutional referendum took place. The Catalan government proclaimed that the secessionist proposal had prevailed.

15. Thereafter, the Parliament of Catalonia adopted Resolution no. 5/XII of 5 July 2018, which was also substantively similar to Resolution no. 1/XI of 2015 and which reiterated the goal of establishing an independent and

sovereign Catalan State. In turn, the Constitutional Court declared several of its provisions unconstitutional by way of judgment no. 136/2018 of 13 December 2018.

16. On 11 October 2018 the Parliament of Catalonia adopted Resolution no. 92/XII, which contained a declaration of censure against the monarch and a call for the abolition of the monarchy: it rejected and condemned the stance of King Felipe VI in relation to the events of 1 October 2017 in Catalonia (namely the "referendum of self-determination" – see paragraph 14 above) and reaffirmed the Parliament's commitment to republican values. In so far as relevant, the Resolution stated as follows:

> "15. The Parliament of Catalonia, in defence of Catalan institutions and fundamental freedoms:
>
> ...
>
> (c) Rejects and condemns the stance of King Felipe VI, his intervention in the Catalan conflict and his justification of the violence carried out by the police on 1 October 2017.
>
> (d) Reaffirms [its] commitment to republican values and supports the abolition of such an outdated and anti-democratic institution as the monarchy."

17. The Spanish government referred that Resolution to the Constitutional Court, which declared some of its provisions unconstitutional by way of its judgment no. 98/2019 of 17 July 2019. The ruling found that the Resolution exceeded the powers conferred on the Parliament of Catalonia, and that the expressions of rejection and condemnation of the King's interventions, together with the call for the abolition of the monarchy, entailed the attribution of political responsibility to the King, which was contrary to the constitutional status of the monarch. In addition, the Constitutional Court reiterated that the parliaments of Autonomous Communities did not have authority to judge the stance taken by the Head of State, or parliamentary monarchy as a system of government. The Constitutional Court expressed its reasoning, in as much as is relevant, in the following terms:

> "It is, therefore, a formal declaration in which the Parliament of Catalonia takes an institutional position by issuing a value judgment that is contrary to the constitutional configuration of the institution of the Crown.
>
> ... it must be concluded, firstly, that those statements of 'rejection' and 'condemnation' of the King are contrary to [... the Spanish Constitution], which determine[s] the constitutional status of the monarch. ... because his status is regulated by the Constitution (characterising him as a 'symbol of the unity and permanence' of the State and entrusting him with the arbitration and moderation of the regular functioning of the institutions ...) in order to assure him a position of neutrality with respect to ... political contest, a position that affords him a respect that is qualitatively different to that [afforded to] the other institutions of the State ...
>
> Furthermore, such a decision by the [Parliament of Catalonia] has been adopted outside the scope of its own powers, which are those conferred on it by the Constitution, the Statute of Autonomy of Catalonia and its own organic regulations, which do not recognise any power of censure or reprobation of royal acts ..."

18. After the above-mentioned judgments of the Constitutional Court had been handed down, the Catalan Parliament adopted other similar resolutions. They included, in particular, Resolution no. 534/XII "on proposals for the real Catalonia", adopted on 25 July 2019, and Resolution no. 546/XII "on the general political orientation of the Catalan government", adopted on 26 September 2019.

19. Resolution no. 534/XII stated, in so far as relevant, as follows:

> "The Parliament of Catalonia ...
>
> (e) Reaffirms its commitment to republican values and is committed to the abolition of such an outdated and antidemocratic institution as the monarchy, as already stated in Resolution no. 92/XII, [which was] approved by the majority of the Parliament of Catalonia, and also reaffirms its rejection of the position of King Felipe VI and his intervention in the Catalan conflict and his justification of the violence used by the police forces on the first of October. ...
>
> The Parliament of Catalonia reaffirms its reprobation of Felipe VI for his position and his intervention in relation to the democratic conflict generated by the denial of civil and political rights in Catalonia by the Spanish State. ...
>
> The Parliament of Catalonia reaffirms its right to express political assessments and opinions on the performance and future of the monarchical institution and its commitment to republican values, as expressed in Resolution no. 92/XII on the prioritisation of the social agenda and the recovery of coexistence."

20. Resolution no. 546/XII stated, in so far as relevant, as follows:

> "The Parliament of Catalonia reaffirms, in accordance with Resolution no. 1/XI of 2015 and with section I.2.6 of Resolution no. 534/XII of 2019, its fully sovereign character; rejects the anti-democratic impositions of the institutions of the Spanish State and, in particular, of its Constitutional Court and Supreme Court, and, consequently, affirms the legitimacy of civil and institutional disobedience as instruments in defence of civil, political and social rights that may be injured."

21. The Spanish government lodged five sets of enforcement proceedings with the Constitutional Court against certain sections of both Resolutions, considering that they were contrary to the court's previous judgments nos. 259/2015, of 2 December 2015, 136/2018, of 13 December 2018, and 98/2019, of 17 July 2019 (summarised in paragraphs 10-17 above).

22. On 10 and 16 October 2019, the Constitutional Court issued five *providencias* (formal decisions on routine aspects of proceedings) by which it suspended the impugned Resolutions in part. In each case, it also gave notice of the enforcement proceedings to the public prosecutor's office and to the Parliament of Catalonia to obtain their submissions on the government's request for enforcement. Furthermore, the Constitutional Court ordered that personal notification of its *providencias* be given to the President of the Parliament of Catalonia and its Secretary General, as well as to the members of the Bureau (including the first two applicants), requesting them to refrain from taking any steps to comply with the contested sections of the impugned Resolutions as well as informing them of their duty to prevent or

stall any legal or material initiative that could directly or indirectly entail ignoring or circumventing judgments nos. 259/2015, 136/2018 and 98/2019. The notifications also warned their recipients of the possible liability, including criminal liability, that they could incur should they disregard them.

23. The applicants in all of the applications requested that they be admitted to the enforcement proceedings as parties in their own right in order to defend their rights and legitimate interests. They also lodged appeals (*recursos de súplica*) against the Constitutional Court's *providencias* of 10 and 16 October 2019. Counsel for the Parliament of Catalonia also lodged appeals on behalf of that institution.

24. On 12 November 2019, the Constitutional Court issued five decisions (*autos* nos. 141/2019, 142/2019, 143/2019, 144/2019 and 145/2019). On the one hand, it requested the Spanish government, the Catalan Parliament and the public prosecutor's office to make submissions on whether the applicants in application no. 48537/20, who were members of the Parliament of Catalonia but not of its Bureau, should have legal standing in those proceedings, given that their individual rights were not at stake. On the other hand, the Constitutional Court admitted the first two applicants, Mr J. Costa i Rosselló and Mr E. Campdepadrós i Pucurull, as parties to the proceedings, but limited their participation to defending their legitimate rights and interests as individuals in those proceedings, independently from the Parliament of Catalonia, which was represented by its own counsel. That decision was based on the fact that they had been personally notified of their duties with regards to the execution proceedings, in their capacity as members of the Bureau.

25. Notwithstanding the above, the Constitutional Court considered that the first two applicants had lodged their appeals against the *providencias* of 10 and 16 October 2019 outside the three-day time-limit for doing so.

26. On 18 December 2019, the Constitutional Court adopted five *autos* (nos. 180/2019, 181/2019, 182/2019, 183/2019 and 184/2019). In each case, it concluded that what was at issue was whether its previous judgments (nos. 259/2015, 136/2018 and 98/2019, see paragraphs 10, 15, 17 above) had been disregarded or undermined by Resolutions nos. 534/XII and 546/XII. It began by noting that both Resolutions had already been debated and voted on by the members of the Parliament of Catalonia, who had thus fully exercised their rights of political participation. In addition, the members of Parliament who had requested to be admitted as parties to the enforcement proceedings had not been personally notified of their duty to comply with any decisions or judgments of the Constitutional Court. As a result, in each of those five *autos* the Constitutional Court rejected the request lodged by counsel for E. Artadi i Vila and other members of the Parliament of Catalonia (the applicants in application no. 48537/20) to be admitted as parties to the enforcement proceedings. The specific content of each of those *autos* is detailed below.

27. By way of the above-mentioned *autos* nos. 180/2019 and 181/2019, the Constitutional Court upheld the enforcement applications lodged by the Spanish government and declared unconstitutional certain provisions of Resolutions nos. 534/XII and 546/XII, respectively, because of their being contrary to its judgment no. 259/2015. The Constitutional Court observed that in the impugned Resolutions the Parliament of Catalonia had asserted that it had the authority to adopt all the necessary decisions for the creation of an independent State. It considered that the Resolutions had thus violated the principle of democracy and the primacy of the Constitution, and the constitutional standards that granted the Spanish people national sovereignty. In a social and democratic State under the rule of law, it was not possible to proclaim the alleged democratic legitimacy of a legislative body as a way of circumventing the unconditional primacy of the Constitution, since democratic legitimacy and constitutional legality could not be set against each other to the detriment of the latter. The political aspiration of an Autonomous Community to amend the existing constitutional order could be defended, but only while respecting the Constitution and the procedures established for its formal revision. The Resolutions and their planned implementation meant that the Parliament of Catalonia was ruling out the use of the constitutional channels expressly provided for a redefinition of the constitutional order, and had had recourse to a process that was incompatible with the rule of law. Basing itself on those considerations, the Constitutional Court concluded that the impugned provisions of the relevant Resolutions were objectively contrary to the Spanish Constitution, in the light of the findings of the Constitutional Court judgment no. 259/2015.

28. Again, the Constitutional Court ruled that those *autos* should be personally notified to, amongst others, the members of the Bureau, with a warning of their duty to abide by the court's decisions and a warning about the liability they could otherwise incur. The Constitutional Court clarified that those injunctions and warnings in no way infringed the parliamentary autonomy or the parliamentary immunity of the members of the Parliament of Catalonia, or compromised the exercise of political representatives' right to participate in the political process; it considered, on the contrary, that they were the obligatory consequence of the submission of all public authorities to the Spanish Constitution.

29. In the above-mentioned *autos* nos. 182/2019 and 183/2019 the Constitutional Court found that the two sets of enforcement proceedings concerned, which had been brought against several provisions of Resolutions nos. 534/XII and 546/XII for being contrary to its judgment no. 136/2018, were identical to and pursued the same objectives as the sets of enforcement proceedings which had been upheld in its *autos* nos. 180/2019 and 181/2019, described in paragraph 27 above. The Constitutional Court therefore discontinued them.

30. By way of the above-mentioned *auto* no. 184/2019, the Constitutional Court upheld the relevant enforcement proceedings and declared unconstitutional certain provisions of the impugned Resolution no. 534/XII as being contrary to its judgment no. 98/2019 of 17 July 2019. The Constitutional Court concluded that the content of the impugned provisions had to be interpreted within the context of the Resolution's rejection and condemnation to the constitutional system of parliamentary monarchy, of which the King was a symbol. The *auto* also stated that it should be personally notified to, amongst others, the members of the Bureau, with a reminder of their duty to abide by the Constitutional Court's decisions and a warning about the liability they could otherwise incur.

31. On 18 December 2019 the applicants lodged individual appeals against *autos* nos. 180/2019, 181/2019 and 184/2019. On 25 February 2020 their appeals were dismissed by the Constitutional Court by *autos* nos. 31/2020, 32/2020 and 33/2020, respectively. They were not amenable to appeal.

B. Decisions of the Bureau of the Parliament of Catalonia of 22 and 29 October 2019 to accept further resolutions for processing and debate, and the ensuing proceedings

32. Despite the fact that the Constitutional Court had held on several occasions (see paragraphs 10-17 and 27, 29 and 30 above) that the content of the above-mentioned Resolutions was contrary to the Spanish Constitution, and that the members of the Bureau had been personally warned of their obligation to refrain from taking any action aimed at complying with the unconstitutional Resolutions and of their duty to prevent or paralyse any legal or material initiative that directly or indirectly entailed ignoring or circumventing the Constitutional Court's judgments, some members of the Parliament of Catalonia initiated other procedures with a view to having other resolutions with similar content adopted and the Bureau accepted for processing several such proposals for resolutions to be debated by the Catalan Parliament.

1. Decision of 22 October 2019 and ensuing proceedings

33. Firstly, the Bureau decided on 22 October 2019 to accept for processing a resolution "in response to the Supreme Court judgment on the events of 1 October 2017". The eleventh paragraph of the draft resolution, which was accepted by the Bureau, contained a subparagraph which read as follows:

> "Therefore, [the Parliament of Catalonia] reiterates and will reiterate as many times as its members wish, the reproval of the monarchy, the defence of the right to self-determination and the vindication of the sovereignty of the people of Catalonia to decide their political future."

Various political groups in the Catalan Parliament submitted requests for a reconsideration of the decision to accept that draft resolution for processing. Those requests were rejected by decision of the Bureau on 29 October 2019.

34. The Spanish government challenged the Bureau's acceptance of the above-mentioned draft resolution for processing, and lodged two applications with the Constitutional Court to initiate enforcement proceedings in respect of that court's judgments nos. 259/2015 and 98/2019, which had declared unconstitutional and, as a result, null and void previous resolutions passed by the Parliament of Catalonia (defending the alleged right of Catalonia to become independent and criticising the response of the Spanish State to the will of the Catalan people to achieve a peaceful agreement, and a declaration of censure against the Monarch and a call for the abolition of the monarchy) (see paragraphs 9-11 and 16-17 above). In sum, the government requested the Constitutional Court to declare that the decision of the Bureau to accept for processing a draft resolution with the above-mentioned content constituted a failure to heed the Constitutional Court's judgments nos. 259/2015 and 98/2019, as well as its *providencias* of 10 and 16 October 2019, and that, as a result, the impugned decision should be declared unconstitutional and null and void.

35. On 5 November 2019, the Constitutional Court handed down two *providencias*, by which it suspended the processing of the draft resolution and decided that the President of the Parliament of Catalonia and the members of the Bureau (including the first two applicants), among others, should be personally notified of the initiation of the enforcement proceedings and of their duty to refrain from taking any action aimed at complying with the unconstitutional resolutions, and (once again) reminded of their duty to prevent or paralyse any legal or material initiative that directly or indirectly entailed ignoring or circumventing the Constitutional Court's judgments.

36. All the applicants lodged appeals against the two Constitutional Court *providencias* of 5 November 2019. They also requested to be admitted as parties to the enforcement proceedings in those cases.

37. On 27 November 2019, the Constitutional Court adopted *autos* nos. 162/2019 and 166/2019 by which it found that all the applicants had legal standing and admitted them as parties to the proceedings. In the case of the first two applicants, the court considered that since they had been personally requested to comply with its previous decisions, with a warning that failure to do so could incur liability, including criminal liability, the outcome of the enforcement proceedings could also affect their rights and legitimate interests. Concerning the applicants in the third application, the Constitutional Court observed that the proceedings before it concerned a decision of the Bureau to accept for processing a draft resolution which had been proposed, *inter alia*, by the applicants. As a consequence, their rights and legitimate interests could be affected as a result of the suspension of the Bureau's decision concerning that draft resolution, as well as by the outcome

of the enforcement proceedings. The Constitutional Court considered that the appeals had been lodged in time.

38. On 28 January 2020 the Constitutional Court, by way of *autos* nos. 9/2020 and 11/2020, declared the Bureau's decision of 22 October 2019 unconstitutional and null and void, on the basis that it was contrary to its rulings in judgments nos. 259/2015 and no. 98/2019 and its *providencias* of 10 and 16 October 2019, respectively. That court found that the enforcement proceedings were a suitable procedural avenue for the central government to seek the annulment of the said decision, on the basis of sections 87 and 92 of Institutional Law no. 2/1979 on the Constitutional Court.

In both *autos*, the Constitutional Court stated that it was not censoring political debate in the Parliament, but rather exercising its responsibility to ensure compliance with its judgments and other rulings. In that regard, it noted that due respect for the rulings of the Constitutional Court and, ultimately, for the Constitution, which is binding on all citizens and, in particular, on the public authorities, prohibited the bureaux of the legislative assemblies (such as the Parliament of Catalonia) from accepting for processing any initiative which manifestly failed to comply with the duty to abide by the Constitutional Court's rulings. That court therefore considered that the power of the Bureau to reject proposals whose unconstitutionality was evident was transformed into an obligation to do so when the Bureau had been the addressee of an injunction from the Constitutional Court preventing the processing of a given initiative.

The Constitutional Court reiterated that it had given clear reasons in its judgments nos. 259/2015 and 98/2019 as to why the previous Resolutions nos. 1/XI and 92/XII were unconstitutional. The draft resolution accepted for processing by a decision of the Bureau of 22 October 2019 had expressed that the Parliament of Catalonia would reiterate "as many times as its members wish, the reproval of the monarchy, the defence of the right to self-determination and the vindication of the sovereignty of the people of Catalonia to decide their political future." The Parliament of Catalonia had thus persisted in its unlawful determination to continue the secessionist process in Catalonia, outside the constitutional order and disregarding the decisions of the Constitutional Court, in pursuit of a political project of secession from the Spanish State and the creation of an independent Catalan State in the form of a republic, without following the mechanisms for constitutional revision. That meant, in the Constitutional Court's words, "attempting an unacceptable *de facto* route (incompatible with the social and democratic rule of law proclaimed in Article 1 § 1 of the Spanish Constitution) in order to reform the Constitution by bypassing it, or to achieve its practical ineffectiveness".

Based on the above-mentioned considerations, the Constitutional Court concluded that the Bureau of the Parliament of Catalonia had once again violated the constitutional and statutory order by accepting for processing the

proposed resolution that was objectively contrary to the Constitution, in view of its judgments nos. 259/2015 and 98/2019 and the requirements and warnings contained in the *providencias* of 10 and 16 October 2019 in the enforcement proceedings brought in response to Resolutions 534/XII and 546/XII. The Bureau had been aware of all the above before accepting the parliamentary initiative in question for processing. In fact, the Constitutional Court pointed out that during the meeting of the Bureau of 22 October 2019, the Secretary General and the Registrar of the Parliament of Catalonia, as well as some members of the Bureau, had warned the remainder of the members of the Bureau (including the first two applicants) of the disregard for the prior rulings of the Constitutional Court which it would show if it adopted the decision. The same warnings were repeated when the Bureau was requested to reconsider its decision, a request which it dismissed on 29 October 2019.

Moreover, its members had been expressly warned by the Constitutional Court of their duty to refrain from taking any action aimed at complying with the contested paragraphs of Resolutions 534/XII and 546/XII and to prevent or paralyse any initiative, legal or material, which directly or indirectly entailed ignoring or circumventing the Constitutional Court's judgments, with a warning of the liability, including criminal liability, that they could potentially incur. The Constitutional Court added that the reinforced obligation of public office-holders to abide by the Constitution did not entail a necessary ideological adherence to the entirety of its contents, but did mean a commitment to carry out their duties in accordance with it and to respect the rest of the legal system. As a result, it declared the decision by which the Bureau had accepted the proposed resolution for processing null and void, and also gave notice of its findings to the public prosecutor's office in case that office see fit to pursue legal action against the President of the Parliament of Catalonia and the members of the Bureau (including the first two applicants) for their disobedience of the previous injunctions of the Constitutional Court.

39. The first two applicants lodged appeals against those two *autos*, which were dismissed by the Constitutional Court by way of *autos* nos. 53/2020 and 55/2020 of 17 June 2020.

2. Decision of 29 October 2019 and ensuing proceedings

40. Secondly, the Bureau adopted a decision dated 29 October 2019 to admit for processing a motion "following the request to the government on self-government". The relevant paragraph of that motion read as follows:

> "The Parliament of Catalonia:
>
> 1. Expresses its will to ... exercise its right to self-determination and to respect the will of the Catalan people."

By a decision of 5 November 2019 the Bureau rejected a request for reconsideration of that decision made by various parliamentary groups.

41. On 31 October 2019 the Spanish government filed a new application for the enforcement of Constitutional Court judgment no. 259/2015 in connection with the Bureau's decision of 29 October 2019. On 12 November 2019 the Constitutional Court, sitting in plenary, ordered that judgment no. 259/2015 be notified to the President of the Parliament of Catalonia and to the members of the Bureau, including the first two applicants, with a reminder of their duty to thwart any initiative, legal or material, that would directly or indirectly imply disregarding or circumventing the nullity of the resolutions concerned, or disregarding or circumventing the rulings of the Constitutional Court in its judgment no. 259/2015 of 2 December 2015, and warned them that they could incur liability, including criminal liability, should they ignore that duty.

42. All the applicants lodged appeals against the decision of the Constitutional Court of 12 November 2019; they also requested to be admitted as parties to the enforcement proceedings in order to defend their rights and legitimate interests.

43. On 27 November 2019, the Constitutional Court, by means of *auto* no. 163/2019, admitted all the applicants as parties to the enforcement proceedings so that they could defend their individual rights and legitimate interests, notwithstanding the fact that the Parliament of Catalonia was represented as such by its own counsel.

44. On 11 February 2020 the Constitutional Court, by means of *auto* no. 16/2020, declared the Bureau's decision of 29 October 2019 to accept for processing a motion with content contrary to its judgment no. 259/2015 null and void, essentially on the same grounds as it had given in its previous *auto* no. 9/2020 (see paragraph 38 above). It also gave notice to the public prosecutor's office in case that office saw fit to pursue legal action against the President of the Catalan Parliament and the members of the Bureau (including the first two applicants) for their disobedience of the previous injunctions of the Constitutional Court (see paragraph 49 below).

45. The applicants lodged appeals against that *auto*, which were dismissed by the Constitutional Court by way of *auto* no. 54/2020 of 17 June 2020.

C. Subsequent approval of similar resolutions by the Parliament of Catalonia

46. On 26 November 2019 the Parliament of Catalonia adopted a new version of the above-mentioned Resolution "in response to the Supreme Court judgment on the events of 1 October 2017" (Resolution no. 649/XII), omitting the impugned sections of the eleventh paragraph (see paragraph 33 above). However, paragraphs 12 and 13 expressly included similar wording, and rejected the Constitutional Court's previous finding as to the nullity of the proposed resolution, in the following terms:

> "12. The Parliament of Catalonia:

(a) Condemns the ... censorship that the Constitutional Court seeks to impose on the Parliament of Catalonia through, among other things, the injunctions of 5 November 2019 ordering the suspension in part of paragraph 11 of the original draft of this Resolution, which ended with the following text: 'Therefore, reiterates and will reiterate as many times as the deputies wish the reprobation of the monarchy, the defence of the right to self-determination and the vindication of the sovereignty of the people of Catalonia to decide their political future'.

(b) Rejects the aforementioned suspension in part, agreed by the Constitutional Court, [of the original version of] paragraph 11 of this Resolution, the text [of which is] reproduced in letter (a) of this paragraph 12, and considers that th[at] action by the Constitutional Court is contrary to the fundamental rights of freedom of expression, ideological freedom and political participation.

13. The Parliament of Catalonia:

(a) Rejects the Constitutional Court's repeated interferences with the [work of the] Parliament of Catalonia with the aim of limiting democratic debate, which harm the autonomy and inviolability of the chamber and infringe on the rights of the deputies, and claims to be able to debate and vote on the right to self-determination, [on resolutions expressing] reprobation of the monarchy and on the recognition of the sovereignty of Catalonia and its right to decide.

(b) Notes that the Constitutional Court has become an instrument to give the appearance of formal law to the will of successive governments of the Spanish State to silence the democratic demands of a majority of the Catalan people."

47. On 12 November 2019, the Parliament of Catalonia also adopted a motion "on self-government" stating as follows:

"The Parliament of Catalonia:

1. Expresses its will to ... exercise its right to self-determination and to respect the will of the Catalan people."

48. Enforcement proceedings (brought by the central government) were already underway in the Constitutional Court against the processing of that proposal (see paragraph 41 above). The motion was adopted despite those proceedings. According to the applicants, the reminder sent by the Constitutional Court to the President of the Parliament of Catalonia and the members of the Bureau of their duty to thwart any initiative, legal or material, that would directly or indirectly imply disregarding or circumventing the nullity of the resolutions concerned, as well as disregarding or circumventing the rulings of the Constitutional Court in its judgment no. 259/2015 of 2 December 2015 (see paragraph 41 above), had been received just minutes after the motion had already been adopted.

D. Criminal proceedings against the first two applicants

1. The admissibility of the criminal complaint

49. On 1 March 2021, following the repeated injunctions and warnings issued by the Constitutional Court (see paragraphs 22, 28, 30, 35 and 41

above), and the notice given by the Constitutional Court to the public prosecutor's office (see paragraph 44 above), the High Public Prosecutor of Catalonia lodged a criminal complaint against the first two applicants, the President of the Parliament of Catalonia and another member of the Bureau who had voted in favour of the above-mentioned decisions of the Bureau (see paragraphs 32-45 above). They had allegedly disobeyed decisions of the Constitutional Court, despite express warnings of the illegality of doing so issued by senior counsel of the Catalan Parliament, express opposition by other members of the Bureau and having been personally warned by the Constitutional Court in the context described above.

50. The High Court of Justice of Catalonia declared the criminal complaint admissible and, by a decision of 16 March 2021, found that it had jurisdiction to examine it. The decision was adopted by three judges: Mr B.P., Ms A.B., and Mr R.R. It essentially stated the following:

i. The High Court of Justice of Catalonia had jurisdiction to hear the case against all of the defendants, some of whom were still members of the Parliament of Catalonia at that time and some of whom no longer were, in order not to divide the proceedings.

ii. A decision to declare a criminal complaint admissible had to be limited to, firstly, a basic assessment as to whether there were sufficient indications supporting the veracity of the reported facts; and secondly, a strictly technical assessment of whether the reported facts corresponded to any of the offences in the Criminal Code. The task was therefore limited to checking whether criminal proceedings should be initiated to investigate the reported facts, the actual existence and legal consequences of which had to be subsequently proved under the due guarantees provided for by law.

iii. The criminal complaint reported, in brief, that the defendants, including the first applicant, had contravened decisions of the Constitutional Court despite express warnings from senior counsel of the Catalan Parliament, express opposition by the other members of the Bureau and the orders and warnings issued by the Constitutional Court on repeated occasions.

iv. The decision to be made at that stage had to be solely based on the reported facts of the criminal complaint, without accepting or taking for granted any of the factual or legal assessments contained therein. The court merely accepted that the criminal complaint:

    a) had duly identified the court to which it was addressed, which had jurisdiction under the applicable law;

    b) had duly argued that the complainant had legal standing under the applicable law;

    c) contained a detailed statement of reported facts and the identity of the persons against whom the criminal complaint was addressed; notwithstanding which, the facts

required further investigation, which should be carried out autonomously, independently, and in line with the principle of contradiction, by the judge designated as the investigating judge, who would decide on which evidence must be gathered to that end.

v. In the light of the above, the criminal complaint met all the criteria described by the Criminal Procedure Act; the statement of reported facts presented, *a priori*, an appearance of a criminal offence under the Criminal Code, based on certain indications of evidence, and as a result, the court found that it had jurisdiction to pursue criminal proceedings, declared the complaint admissible, and designated Judge A.B. as the investigating judge.

51. On 28 April 2021, the first applicant lodged an appeal (*recurso de súplica*) against the decision to declare the criminal complaint admissible. He submitted that: he was protected by parliamentary immunity from prosecution because he had been an elected member of the Parliament of Catalonia at the time when the events took place and that the proceedings violated his right to effective legal protection and his right not to be discriminated against in relation to his right to exercise his political mandate, his freedom of expression and his freedom of thought; alternatively, he was no longer a member of Parliament so the proceedings should in any event not be pursued before the High Court of Justice of Catalonia, as doing so would violate his right to be tried by a tribunal established by law, the right to an appeal in criminal matters and the right to be treated equally by the law; or, also in the alternative, the reported facts did not constitute a criminal offence. The other defendants, including the second applicant, also lodged appeals.

52. The appeals were dismissed by a decision of 12 July 2021 by the same three judges of the High Court of Justice of Catalonia who had given the admissibility decision, as provided for by the relevant Law. The court pointed out that its capacity to review a decision to declare a complaint admissible was limited because such provisional decisions did not concern the merits of the case. The admissibility requirements concerned only formal criteria, such as the submission of a statement of reported facts that, if subsequently proved, could *a priori* be constitutive of an offence. The High Court of Justice observed that the appellants at no point denied that the statements of facts were true, but instead contested that they were constitutive of offences or that the appellants could be deemed criminally responsible for them. However, the accuracy of the statement of facts described in the criminal complaint and the question of whether they could be considered to be criminal in nature were to be elucidated during the course of the investigative proceedings. In sum, the mere declaration that a criminal complaint was admissible was not a consequence of the establishment of criminal responsibility; rather, it was a prior condition, a *sine qua non* essential premise for the investigation, verification and determination, with the due guarantees, of any criminal

liability. The appellants' fundamental rights and freedoms had not been compromised by the mere initiation of criminal proceedings. Lastly, the fact that some of the defendants were no longer members of the Parliament of Catalonia could not prevent the investigation from being pursued against all of them before the same tribunal for the sake of the efficient administration of justice, at least at that stage of the proceedings.

53. On 13 September 2021 the first applicant lodged an *amparo* appeal with the Constitutional Court against the decision to declare the criminal complaint against him admissible. He complained, essentially, about the fact that he was being prosecuted despite having immunity based on the fact that he had been a member of the Parliament of Catalonia at the time that the events took place, and relied on his right of political participation and representation and rights to freedom of ideology, freedom of expression and freedom of assembly, and also his right not to be discriminated against in the exercise of the above-mentioned rights and freedoms. He reiterated a complaint that he had made previously in the proceedings about an alleged lack of impartiality on the part of two of the judges of the High Court of Justice of Catalonia (see paragraphs 66-73 below). Additionally, the first applicant argued that all the judges of the Constitutional Court should withdraw from the examination of his *amparo* appeal since they could not be impartial, given that it had been them who had issued the decisions that had led to his prosecution in the first place. He mentioned that it was necessary for him to lodge the *amparo* appeal in spite of that, in order to be able to subsequently lodge other appeals with international courts. The first applicant specifically referred to Articles 6, 9, 10, 11 and 18 of the Convention, as well as Article 3 of Protocol No. 1 and Article 1 of Protocol No. 12 to the Convention in his appeal. He also requested that the criminal proceedings against him be suspended as an interim measure until the Constitutional Court issued a final judgment on his *amparo* appeal.

54. On 14 September 2021, the Constitutional Court decided that, in the light of the first applicant's allegations, the case could have general political consequences and it would hear the *amparo* appeal in a plenary formation. It also initiated proceedings to assess the first applicant's request for the recusal of all its judges. On 16 September 2021 it dismissed the first applicant's recusal request, on the ground that, based on its established case-law, when a recusal request is lodged in respect of all the members of the Constitutional Court it should be read as being made in respect of the Constitutional Court itself. Given that court's nature and the impossibility of replacing its members, such requests were to be considered abusive and dismissed. The first applicant's appeal against that decision was also dismissed.

55. On 2 March 2022, the first applicant complained to the Constitutional Court of an undue delay in addressing his request for an interim measure in which he had sought to have the criminal proceedings against him suspended (see paragraph 53 above *in fine*).

56. The Constitutional Court dismissed the *amparo* appeal in judgment no. 58/2022 of 7 April 2022. The request for an interim measure was rejected in the same judgment.

57. The Constitutional Court rejected the first applicant's allegation of a lack of impartiality on the part of the judges of the High Court of Justice of Catalonia as premature since the criminal proceedings were still ongoing at that time. In that regard, the Constitutional Court stated as follows:

> "... sometimes, this court is approached by way of an *amparo* appeal before the impugned trial has taken place, on the basis of an alleged violation of fundamental rights in the prelude to a criminal trial, in the intermediate phase prior to the oral proceedings, or which remains unresolved. In such procedural conditions, these complaints do not appear to respect the principle of subsidiarity which characterises the constitutional process of *amparo* ... and, more specifically, it cannot be understood that the provision established in section 44 § 1 (a) of the Institutional Law on the Constitutional Court, according to which an admissibility criterion for an *amparo* appeal directed against acts of a judicial body is that 'all the remedies provided by the procedural rules for the specific case within the judicial process have been exhausted'. Along these lines ... it is not possible [to lodge an] *amparo* [appeal] ... when the alleged infringements of fundamental rights can still be raised by the party and examined by the judicial bodies, if necessary, in the judgment which will be handed down at the appropriate time or, definitively, even before that is handed down.
>
> In the words of the Constitutional Court's judgment no. 20/2019: 'In other words, it is not strictly speaking a question of the exhaustion of the specific remedies provided for procedurally against the impugned decision in itself, but of the vision of the previous judicial proceedings as a whole, [which must be appraised to exclude the possibility that] there is still room to raise and repair [within those proceedings] the alleged violation; respect for the subsidiary nature of an *amparo* [appeal] requires waiting for the proceedings to be completed by a final decision on the merits, which inevitably entails assuming a certain delay in the deciding of such appeals.'
>
> In accordance with this doctrine, this Court considers that the alleged breaches of the right to an impartial judge and the right to the ordinary judge predetermined by law have been raised prematurely in these *amparo* proceedings. They should not be analysed now because the judicial [proceedings] in which they have allegedly occurred have not yet finished and, therefore, it is still possible to remedy them. To do otherwise would be to anticipate ... the ordinary courts [by deciding on] issues on which the[y] ... have not yet reached a final decision.
>
> The appeal is therefore declared inadmissible, in accordance with section 50 § 1 (a) of the Institutional Law on the Constitutional Court, with regard to the complaint about the alleged violation of the right to an impartial judge and the right to the judge predetermined by law."

58. As regards the alleged violation of parliamentary immunity from prosecution, the Constitutional Court rejected the possibility that the mere admission of the High Public Prosecutor's complaint could entail a violation of the prerogative in question. That court reiterated its doctrine according to which due respect for the rulings of the Constitutional Court and, ultimately, for the Constitution, which is binding on all citizens and, in particular, on the public authorities, prohibited the bureaux of the legislative assemblies (such

as the Parliament of Catalonia) from accepting for processing any initiative which manifestly failed to comply with the duty to abide by the Constitutional Court's rulings. That court therefore considered that the power of the Bureau to reject proposals whose unconstitutionality was evident was transformed into an obligation to do so when the Bureau had been the addressee of an injunction from the Constitutional Court preventing the processing of a given initiative. The admission for processing of parliamentary motions with a view to adopting resolutions that were contrary to previous rulings of the Constitutional Court was therefore not protected by parliamentary immunity, in the Constitutional Court's doctrine. As a consequence, that court dismissed the first applicant's allegation that the mere admission of a criminal complaint against him based on the above-mentioned statement of facts had contravened his immunity (and that it had thereby amounted to an infringement of his rights to political participation and representation and freedom of expression and freedom of assembly, as well as of his right not to be discriminated against in the exercise of the aforementioned rights).

2. Other developments during the investigation stage of the criminal proceedings

59. On 26 July 2021, after the decision to declare the criminal complaint admissible had become final, the investigating judge at the High Court of Justice of Catalonia issued a decision to initiate criminal proceedings to investigate the alleged offences described in the criminal complaint against the first two applicants and two other persons. In that decisions it was established that the defendants would be heard on 15 September 2021. The first applicant was duly notified through his representative.

60. On 13 September 2021 the first applicant's representative informed the investigating judge that, on that same day, he had lodged an *amparo* appeal with the Constitutional Court (see paragraph 58 above) in which he had also requested it to indicate interim measures including, in particular, the suspension of the criminal proceedings, given that he had challenged the constitutionality of the decision to declare the criminal complaint admissible. In the light of the above, the first applicant requested the postponement of his statement scheduled for 15 September 2021, at least until the Constitutional Court had given a response to his interim measure request.

61. On the next day, 14 September 2021, the investigating judge dismissed the first applicant's request, there not being any legally established reason to postpone the gathering of evidence, including his statement as a defendant.

62. On 15 September 2021, the applicant's lawyer stated that his client (the first applicant) had expressed his will not to appear before the judge. The other defendants appeared.

63. On 16 September 2021, the investigating judge ordered that a separate investigation with regards to the first applicant's personal situation be

initiated. The subsequent proceedings led to the first applicant's detention for several hours on 27 October 2021 in order to obtain his statement. He was immediately released after having appeared before the investigating judge.

64. The lawfulness of the first applicant's above-mentioned detention, the examination of his ensuing appeals as well as the criminal proceedings he initiated against the investigating judge are the subject of a separate application that was submitted by the first applicant to the Court on 20 September 2024 (no. 28054/24) and which is currently pending before it.

65. The investigative stage was concluded on 10 November 2021. The first applicant lodged appeals against the decision to proceed to the trial stage, to no avail. On 8 March 2022 the investigating judge declared the trial stage of the proceedings open.

3. The first applicant's requests for the recusal of judges

66. On 11 May 2021 the first applicant requested the recusal of two judges of the High Court of Justice of Catalonia who had taken part in the decision to declare the criminal complaint against him admissible, Judges B.P. and R.R. (see paragraph 50 above), on the ground that their previous statements and public conduct gave the impression that they lacked impartiality.

67. On 8 June 2021, the investigating judge requested the first applicant to accompany the recusal application with a special power of attorney and representation agreement, as was required by law for such an application, within two days. The applicant contested the judge's request but did not submit the power of attorney and representation. By a decision of 28 June 2021, the investigating judge dismissed the first applicant's recusal request on the basis that it did not comply with the relevant formal requirements.

68. On 7 July 2021, the first applicant lodged an appeal against the decision to dismiss his recusal request, which was declared inadmissible because the decision was not amenable to appeal. He then lodged another appeal against the decision not to accept any further appeals (*recurso de queja*), which was dismissed by the High Court of Justice of Catalonia on 30 September 2021 on the grounds that the decision of the investigating judge had not been arbitrary, that the first applicant had been made aware of the need to comply with formal requirements with which he had deliberately not complied, and that, in any event, he could raise the alleged lack of impartiality of the judges at a later stage (as a preliminary objection at the opening of the trial stage and, eventually, as a ground for an appeal against the judgment).

69. In May 2022, after having received information from the Criminal Chamber of the High Court of Justice of Barcelona about the three judges who would preside over his trial – Judges B.P, M.P., and R.R., two of whom had taken part in the decision to declare the criminal complaint admissible in the first place (see paragraph 50 above) – the first applicant requested that those three judges be recused because of their alleged lack of impartiality towards him and the rest of the defendants.

70. On 30 June 2022, following a specific investigation into the grounds advanced for recusal, which included the relevant judges' reports on their own views on the grounds for their alleged lack of impartiality, the Recusals Chamber of the High Court of Justice of Barcelona upheld the recusal application lodged by the first applicant against judge B.P. based on that judges' acts in a conference in Barcelona in 2018. That decision, however, also stated that the mere admission of a criminal complaint was a purely formal judicial decision, which did not imply any legal assessment as to whether the alleged offences had been committed or the defendants' guilt. As a result, the fact that some of the judges who were going to take part in the trial had already taken part in the decision to admit the complaint (see paragraphs 50-52 above) was not enough to consider that they may have any preconceived ideas about the outcome of the proceedings, and, therefore, the application for recusal in respect of them, which had relied solely on that ground, was dismissed.

71. In the meantime, on 30 June 2022, the first applicant had lodged new recusal proceedings against Judges B.P. and R.R. on the basis of statements in the reports written by both judges in the previous recusal proceedings (see paragraph 70 above).

72. On 1 August 2022 the Recusals Chamber upheld the application for the recusal of Judge R.R.: it considered that although his report in the previous recusal proceedings did not "[include] any emotional expression or ma[k]e any prognosis regarding the guilt of [the applicant]" or contain "any feeling of hostility", the statements in said report regarding the grounds advanced for the recusal and other procedural issues could cast doubt on his impartiality.

73. In the light of the recusal of two out of three judges, a new panel was appointed for the trial.

4. The first applicant's acquittal and the pending appeals against it

74. The trial took place from 5 to 7 October 2022. The first applicant was present and chose to represent himself.

75. On 15 November 2022 the High Court of Justice of Catalonia acquitted all the defendants, including the first two applicants. It concluded that it could not be established that the former members of the Bureau of the Parliament of Catalonia, or its former President, had committed the crime of disobedience. The High Court of Justice considered that the relevant decisions of the Constitutional Court were open to more than one interpretation, and that it had not been shown that the defendants had been aware that they were disobeying the Constitutional Court's decisions or that they had openly refused to abide by those decisions. It furthermore stated that the acquittal was in line with the consolidated case-law of the Constitutional Court as well as with the Court's case-law on freedom of expression, citing, among others, the cases of *Otegi Mondragon v. Spain* (no. 2034/07, § 50, ECHR 2011), *Stern Taulats and Roura Capellera v. Spain* (nos. 51168/15

and 51186/15, §§ 32-33, 13 March 2018), and *Karácsony and Others v. Hungary* [GC] (nos. 42461/13 and 44357/13, § 137, 17 May 2016).

76. The judgment also, however, rejected the procedural objections raised by the defendants, in particular their arguments concerning their parliamentary immunity from prosecution. It considered that, in the light of the Constitutional Court's case-law (see in particular judgment 184/2021, referred to in paragraph 94 below), parliamentary immunity was a prerogative granted not as an individual privilege but as a guarantee of the freedom of the Parliament through the parliamentary members. It did not cover any action by parliamentarians; its material scope extended to the "votes" and "opinions" issued by members of the Parliament of Catalonia. However, while members of the Bureau had the power to admit or not admit a motion for a resolution if it was unconstitutional, they were under an obligation to declare inadmissible a motion for the processing of a draft resolution if it was contrary to what had been ordered by the Constitutional Court. The role of the Bureau to admit or reject a motion for a resolution was administrative rather than representative in nature, and unrelated to the fundamental right of expression, which was an individual right. When the Bureau exercised its power to admit or reject parliamentary initiatives, it was not exercising a fundamental right. Moreover, the prerogative of parliamentary immunity could not be used as a pretext for a parliament to violate the constitutional order.

77. The first applicant's argument that he should not have been tried by the High Court of Justice of Catalonia because he was no longer a member of the Parliament was also dismissed because one of the defendants was still a member of the Parliament of Catalonia and the proceedings were inseparably connected, so the applicable procedural law provided that they should be adjudicated together, by the same judicial body.

78. The High Court of Justice of Catalonia also rejected the first applicant's complaints about the two judges who had been recused from the trial (see paragraph 73 above) having participated in the decision to declare the criminal complaint admissible, explaining that the issue had already been raised and dismissed in a decision that had become final. Moreover, it observed that the recusal of Judge R.R. from the trial had been based on statements made in a report which had been drafted over a year after that judge had decided to declare the criminal complaint admissible. Lastly, the High Court of Justice reiterated "the procedural nature of the decision to declare admissible the criminal complaint, in that it is issued at a very early stage of the proceedings and is limited to a provisional assessment of the existence of evidence and, therefore, at no point does it imply a decision on the merits, whether factual or legal in nature."

79. Despite his acquittal, on 24 January 2023 the first applicant lodged an appeal on points of law against the judgment of the High Court of Justice of Catalonia. He requested that the Supreme Court affirm his parliamentary

immunity from prosecution. In particular he stressed that, notwithstanding his acquittal, the fact that he had been denied parliamentary immunity had had a chilling effect on the exercise by members of the Parliament of Catalonia of their fundamental rights. Moreover, he challenged the finding that he, as well as the other members of the Bureau, had had a duty not to accept for processing the impugned resolutions. He also reiterated the allegations of a lack of impartiality on the part of the investigating judge and of Judges B.P. and R.R., who had declared the complaint admissible, and of the judges of the Constitutional Court, who were the ones who had given notice to the public prosecutor's office in case it wanted to lodge a criminal complaint against him. On those grounds, among others, the first applicant complained that he had suffered a violation of his right to political participation, his right to a fair trial, his right to an impartial judge predetermined by law, his right to freedom of expression and assembly, and his right to honour.

80. The judgment of 15 November 2022 was also appealed against by the other defendants (who had also been acquitted), the public prosecutor's office and the popular accusing party (*acusación popular*), with the latter two requesting a conviction.

81. Based on the information available to the Court, as of January 2025 the domestic proceedings were still ongoing.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Relevant constitutional and legal framework and international materials

82. The relevant Articles of the Spanish Constitution read as follows:

Article 2

"The Constitution is based on the indissoluble unity of the Spanish nation, the common and indivisible country of all Spaniards; it recognises and guarantees the right to autonomy of the nationalities and regions of which it is composed, and the solidarity among them all."

Article 66

"The *Cortes Generales* [the Spanish Parliament] shall represent the Spanish people and shall consist of the Congress of Deputies and the Senate."

Article 71

"1. Members of Congress and Senators shall enjoy freedom of speech for opinions expressed in the exercise of their functions."

Article 87

"1. The government, the Congress of Deputies and the Senate shall have competence to propose legislation, in accordance with the Constitution and the Rules of Procedure of the Houses.

2. The [Parliamentary] Assemblies of the Autonomous Communities may request the government to pass a bill or refer a non-governmental bill to the Bureau of the Congress of Deputies, and appoint a maximum of three members of the Assembly [of the Autonomous Community] to defend it."

Article 137

"The State shall be organised territorially into municipalities, provinces and Autonomous Communities that may be established. All these bodies shall enjoy self-government for the management of their respective interests."

Article 149

"1. The State has exclusive competence over the following matters:

...

3. Matters not expressly attributed to the State by this Constitution may correspond to the Autonomous Communities, by virtue of their respective Statutes. Competence over matters which have not been taken on by the Statutes of Autonomy shall correspond to the State, whose regulations shall prevail, in the event of conflict, over those of the Autonomous Communities in all matters not attributed to the exclusive competence of the latter. State law shall, in all cases, be supplementary to the law of the Autonomous Communities."

Article 155

"1. If an Autonomous Community does not fulfil the obligations imposed upon it by the Constitution or other laws, or acts in a way that is seriously prejudicial to the general interests of Spain, the government, after lodging a complaint with the President of the Autonomous Community and failing to obtain satisfaction, may, following approval granted by an absolute majority of the Senate, take all the measures necessary to compel the latter to meet those obligations, or to protect the above-mentioned general interests.

2. With a view to implementing the measures provided for in the foregoing paragraph, the government may issue instructions to all the authorities of the Autonomous Communities."

Article 166

"The right to propose a constitutional amendment shall be exercised under the terms set out in paragraphs 1 and 2 of Article 87."

Article 168

"If a total revision of the Constitution is proposed, or a partial revision thereof, affecting the Preliminary Title, Chapter Two, Section 1 of Title I, or Title II, the principle shall be approved by a two-thirds majority of the members of each House, and the *Cortes Generales* shall immediately be dissolved.

The elected Houses must ratify the decision and proceed to examine the new constitutional text, which must be approved by a two-thirds majority of the members of both Houses.

Once the amendment has been passed by the *Cortes Generales*, it shall be submitted to ratification by referendum."

83. The relevant sections of Institutional Law no. 2/1979 on the Constitutional Court, in force since 17 October 2015, read:

Section 76

"Within two months from the date of their publication or, failing such publication, from the time they come to its knowledge, the government may challenge before the Constitutional Court regulatory provisions of no binding nature and resolutions issued by any body of the Autonomous Communities."

Section 77

"The challenge regulated in this Title, whatever the grounds on which it is based, shall be formulated and substantiated by the procedure provided for in sections 62 to 67 of this Law. The submission of the challenge as acknowledged by the Constitutional Court shall lead to the suspension of the provision or decision appealed against until the Court decides to ratify or lift it within a period of no more than five months, unless it has previously issued a ruling."

Section 87

"(1) The judgments of the Constitutional Court shall be binding on all public authorities.

In particular, the court may agree to personally notify its decisions to any authority or public employee it deems necessary.

(2) The courts shall provide the Constitutional Court, as a matter of priority and urgency, with any legal cooperation and assistance it may request.

To this end, judgments and court decisions shall be considered enforceable."

Section 88

"(1) The Constitutional Court may request public authorities and any public administration body to furnish records, reports and documents concerning a decision or act forming the subject of constitutional proceedings. If an appeal has already been lodged, the court shall set a deadline for such records, information or documents to be made available to the parties, so that they may put forward their arguments.

(2) The court shall take all necessary steps to preserve the confidentiality to which certain documents are subject by law and the confidentiality which the court itself confers on certain proceedings by means of a reasoned decision."

Section 92

"(1) The court shall ensure the effective implementation of its rulings. It may determine, in the judgment or decision or in subsequent measures, the body responsible

for enforcement, the necessary enforcement measures required and, where applicable, it may decide on interlocutory matters relating thereto.

The court may also quash any decisions that breach rulings delivered in the exercise of its jurisdiction, on the occasion of their enforcement, after hearing the public prosecutor's office and the body which delivered the decision in question.

(2) To ensure the effectiveness of its rulings, the court may request assistance and legal cooperation from any public authority or public administration, which shall provide it as a matter of priority and urgency.

(3) The parties may bring an action to request the enforcement [of a judgment or decision] as provided in subsection 1. They may suggest to the court the necessary enforcement measures to ensure the effective implementation of its decisions.

(4) In the event that the court becomes aware that a ruling delivered in the exercise of its jurisdiction is not being complied with, the court, of its own motion or at the request of the parties to the proceedings, shall require the institutions, authorities, public employees or private individuals responsible for its enforcement to report to it in that connection within the time-limit set. Once the report is received or when the time-limit has expired, if the court finds that its ruling is being fully or partially unimplemented, it may adopt any of the following measures:

(a) Impose a fine of 3,000 to 30,000 euros on the authorities, public employees or private individuals failing to comply with the court's rulings, with the possibility of repeating the fine until the order has been completely enforced.

(b) Suspend from their duties any public authorities or public employees that are responsible for non-compliance, for the time needed to ensure the enforcement of the court's rulings.

(c) Ensure the substitute enforcement of rulings delivered in constitutional proceedings. In that case, the court may request the cooperation of the national government so that, within the terms provided by the court, the necessary measures are adopted to ensure compliance with such rulings.

(d) Take appropriate evidence from individuals to establish any criminal liability that may arise."

Section 93

"2. Appeals against *providencias* and *autos* of the Constitutional Court may only be lodged by way of *recurso de súplica*, which shall not have suspensive effect. The appeal may be lodged within three days and shall be decided, after all the parties have been heard within the same time-limit, within the following two days."

84. The relevant provisions of Institutional Law no. 6/2006 of 19 July 2006 on the Statute of Autonomy of Catalonia read as follows:

Section 55

"Parliament shall exercise legislative power, approve the budgets of the *Generalitat*, and scrutinise and promote political and governmental action. It is the place where pluralism shall be expressed and political debate shall be made public."

Section 57

"Members of Parliament have immunity with regard to the votes and opinions they may express in the exercise of their position. During their term in office they enjoy legal immunity and may not therefore be arrested unless they are caught in the act of committing an offence."

Section 59

"Parliament shall have a president and a Bureau elected by the Plenary. Their election and duties shall be governed by Parliament's Rules of Procedure."

85. The relevant provisions of the Rules of Procedure of the Parliament of Catalonia read as follows:

Rule 37

"1. The Bureau of Parliament is the collegiate governing body of Parliament and is made up of the president, two vice-presidents and four secretaries.

2. The Bureau shall act under the direction of the president of Parliament and shall represent Parliament at the events which it attends.

3. The Bureau shall have the following duties:

(a) to take the decisions required for parliamentary business, in the event of doubt or regulatory gaps;

(b) to take the decisions and measures required for the organisation of Parliament's work;

(c) to implement Parliament's budgets;

(d) to assess, in accordance with the Rules of Procedure, parliamentary documents and papers, and to declare them admissible or inadmissible for processing;

(e) to decide on the handling of all parliamentary documents and papers in accordance with the rules laid down in these Rules of Procedure. ..."

Rule 39

"The president of Parliament shall represent the House; he or she shall establish and maintain order in discussions and conduct debates impartially and with due respect for Parliament; he or she shall comply with and enforce compliance with the Rules of Procedure, and exercise all other functions conferred upon him or her by the Statute of Autonomy of Catalonia, the law, and these Rules of Procedure."

Rule 40

"1. In the event of a vacancy or the absence or incapacity of the president of Parliament, the vice-presidents, in consecutive order, shall stand in for the president with the same rights, duties and powers. They shall also, in that order, perform any other duties entrusted to them by the president and the Bureau.

2. The representation of the House by the president of Parliament may only be delegated, where appropriate, to one of the vice-presidents."

Rule 43

"1. The Plenary shall elect the members of the Bureau at the constituent sitting of Parliament. ..."

86. The relevant provision of the Spanish Criminal Code states as follows:

Article 410

"1. Authorities or civil servants who openly refuse to duly fulfil court resolutions, decisions or orders of a higher authority, handed down within the scope of their respective powers and complying with the legal formalities, shall be punished by a fine from three to twelve months and special disqualification from public employment and office for a term of six months to two years.

2. Notwithstanding what is set forth in the preceding paragraph, authorities or public officers shall not incur criminal liability based on not having fulfilled an order which constituted a manifest, clear and absolute breach of a provision of an Act or Law, or of any other general provision."

87. The relevant provisions of the Criminal Procedure Act of 14 September 1882 state as follows:

Section 313

"The [criminal] complaint will be dismissed ... where the events on which it is based do not constitute an offence, or where [the courts] do not consider themselves competent to hear the pre-trial proceedings [with regards to those events].

An appeal may be lodged against [such a] judicial decision ..."

88. Institutional Law no. 1/2024 of 10 June 2024 on the amnesty for the institutional, political and social normalisation in Catalonia reads, in so far as relevant, as follows:

Section 1. Objective scope

"1. The following acts giving rise to criminal, administrative or accounting liability (*responsabilidad contable*), if they were carried out in the framework of the consultations held in Catalonia on 9 November 2014 and 1 October 2017, their preparation or their consequences, and provided that they have been carried out between 1 November 2011 and 13 November 2023, as well as the following actions carried out between these dates in the context of the so-called Catalan independence process, even if they are not related to the aforementioned consultations or were carried out after they were held, shall be amnestied:

(a) Acts committed with the intention of claiming, promoting or procuring the secession or independence of Catalonia, as well as those that would have contributed to the achievement of such purposes.

...

c) Acts of disobedience, whatever their nature, public disorder, attacks against the authorities or the agents and public officials thereof or [acts of] resistance that have been carried out with the purpose of allowing the holding of the referendums referred to in point b) of this section, or their consequences, as well as any other acts classified as criminal offences carried out with the same intention.

In any case, this shall include acts classified as malfeasance (*prevaricación*) or any other acts consisting in the approval or execution of laws, rules or resolutions by public authorities or officials which have been carried out for the purpose of allowing, favouring or assisting the holding of the referendums referred to in point (b) of this section."

Section 3. Extinction of criminal, administrative or accounting liability

"The amnesty declared by virtue of this Law produces the extinction of criminal, administrative or accounting liability, under the terms provided for in this Title."

Section 4. Effects on criminal liability

"Without prejudice to the provisions of Article 163 of the Constitution and Article 267 of the Treaty on the Functioning of the European Union, following the entry into force of this law:

a) The judicial body hearing a case shall order the immediate release of the persons benefiting from the amnesty who are in prison either because their provisional detention has been ordered or because they are serving their sentence.

Likewise, it shall agree to the immediate lifting of any preventive measures of a personal or real nature which may have been adopted in respect of actions or omissions falling within the objective scope of this law, with the sole exception of the civil measures referred to in section 8(2).

b) The judicial body hearing the case shall proceed to revoke any search and arrest warrants and arrest warrants for persons to whom this amnesty applies, as well as any national, European and international arrest warrants.

c) The suspension of criminal proceedings for any reason shall not prevent the lifting of those preventive measures which had been agreed prior to the entry into force of this Law and which entail the deprivation of the exercise of fundamental rights and public liberties.

d) The judicial body hearing the case shall terminate the execution of all custodial sentences, disqualifications and fines that have been imposed as a principal penalty or as an accessory penalty, and which have their origin in acts or omissions that have been amnestied.

e) Total or partially served custodial sentences may not be credited in other criminal proceedings in the event that the acts for which the sentence was executed are amnestied in application of this law. The same rule shall apply in relation to periods of pre-trial detention not followed by a conviction owing to the entry into force of this Act.

(f) Any criminal record resulting from the conviction for the criminal act for which amnesty has been granted shall be expunged."

Section 6. Effects on public employees

"1. Sanctioned or convicted public employees shall be reinstated with full active and passive rights, and shall be reinstated in their respective bodies, if they have been dismissed from them ..."

89. The Institutional Law of the Judiciary provides as follows:

Section 228

"3. No appeal lies against the decision of an application for recusal, without prejudice to the possibility of asserting, when appealing against the decision that decides the lawsuit or case, the possible nullity of the latter on the ground that there were grounds to recuse the judge or magistrate who issued the decision appealed against, or who was a member of the corresponding Chamber or Section."

90. On 13 March 2017 the European Commission for Democracy through Law ("the Venice Commission") stated, among other things:

"69. ... [J]udgments of Constitutional Courts have a final and binding character. As a corollary of the supremacy of the Constitution, judgments of Constitutional Courts have to be respected by all public bodies and individuals. Disregarding a judgment of a Constitutional Court is equivalent to disregarding the Constitution and the Constituent Power, which attributed the competence to ensure this supremacy to the Constitutional Court. When a public official refuses to execute a judgment of the Constitutional Court, he or she violates the principles [of] the rule of law, the separation of power and loyal cooperation of state organs. Measures to enforce these judgments are therefore legitimate. In the light of the absence of common European standards, this opinion examines to which extent the Amendment introduced to Institutional Law no. 2/1979 on the Constitutional Court of Spain is an appropriate means to achieve this legitimate objective. ..."

B. Relevant constitutional case-law

91. In their observations in application no. 42224/22, the Government relied on the Constitutional Court's judgment no. 38/2019 of 26 March 2019, which stated, in so far as relevant, as follows:

"... this Court has repeatedly and continuously concluded that a judicial decision which puts an end to a recusal application in a criminal case, despite its purpose and importance for the development of the criminal proceedings, does not entail the exhaustion of the prior judicial proceedings. Not only because the Institutional Law of the Judiciary (section 228 § 3) expressly provides that '[n]o appeal lies against the decision of an application for recusal, without prejudice to the possibility of asserting, when appealing against the decision that decides the lawsuit or case, the possible nullity of the latter on the ground that there were grounds to recuse the judge or magistrate who issued the decision appealed against, or who was a member of the corresponding Chamber or Section', but also because – according to the case law of the Supreme Court since 1982 – in the preliminary phase of the oral trial, both in the abbreviated procedure and in ordinary criminal proceedings through the preliminary ruling questions, it is possible to assert and obtain redress for alleged violations of fundamental rights alleged by the parties (Constitutional Court's decision no. 173/1995, of 6 June 1995)."

92. The first applicant relied on other Constitutional Court judgments to support some of his complaints (see paragraph 102 below). In judgment no. 30/1997 of 24 February 1997, the Constitutional Court held that the principle of parliamentary immunity of deputies had been violated. The case had concerned statements made during a parliamentary session in the Parliament of Extremadura. Those statements had been considered by a third party to infringe his right to honour. The Constitutional Court had found, *inter*

alia, that the deputy concerned was not liable for expressions made in the exercise of his position as an independent deputy.

93. The applicant also relied on judgment no. 40/2003 of 27 February 2003 of the Constitutional Court, which referred to the competence of the Bureau of a regional Parliament (in that case, the Parliament of the Basque Country) to admit or refuse legislative proposals or draft resolutions, and the relationship between this competence of the Bureau and the right of other members of parliament to have draft resolutions admitted for discussion. In that judgment, the powers of the Bureau were addressed from the perspective of parliamentarians. The Constitutional Court had considered that bureaux should limit their power to admit (or not) draft resolutions given that a decision not to admit certain resolutions could hinder the ability of parliamentarians to hold public debates on relevant topics, regardless of whether such draft resolutions were ultimately adopted. In that case, the Constitutional Court had considered that the Bureau of the Parliament of the Basque country had not sufficiently and adequately reasoned why the draft resolution at issue (which had concerned the role of the Basque Court of Public Accounts) could not be examined by the Parliament.

94. In its judgment no. 184/2021 of 28 October 2021 the Constitutional Court found that the actions of the President of the Parliament of Catalonia, namely her having moved for the admission, processing, debate and voting on parliamentary initiatives that served to support decisions adopted by Parliament intending to initiate the so-called "constituent process" (towards the independence of Catalonia), were not protected by parliamentary immunity from prosecution as they clearly deviated from the institutional purpose of that privilege.

COMPLAINTS

A. Complaints under Article 1 of Protocol No. 3, and Articles 10 and 11 of the Convention

1. First and second applicants

95. The first two applicants complained under Articles 10 and 11 of the Convention and Article 3 of Protocol No. 1 to the Convention that the Bureau had been placed under an obligation to prevent certain debates from taking place in the Parliament of Catalonia.

96. In that regard, they complained of the "vague injunctions" given by the Constitutional Court to the members of the Bureau in its *autos* nos. 180/2019, 181/2019 and 184/2019 (see paragraphs 22, 23 and 26 above), which sought to prevent them from admitting for debate in the Parliament of Catalonia any future draft resolutions of a similar content to the ones that had already been declared unconstitutional. They complained that the notifications addressed personally to them had included admonitions about

the potential criminal liability they could incur (see paragraphs 24-26 above). The first two applicants argued that the decisions of the Constitutional Court to prohibit debates on the independence of Catalonia or on the censuring of the head of State had implied, without a legal basis, "coercion exercised against the members of the Bureau in order to make the prohibition effective, namely by ordering them to prevent the processing of initiatives that could give rise to such debates under threat of criminal sanctions that include[d] the loss of their position". The first two applicants submitted that the Constitutional Court had applied an extensive interpretation of its powers in the enforcement proceedings in respect of its judgments nos. 259/2015 and 98/2019. In their view, that had entailed an unacceptable interference with the autonomy of the Parliament of Catalonia and had prevented them, as vice-president and secretary of the Bureau, and the Parliament of Catalonia itself, from carrying out their tasks with a view to holding debate on the issues of general interest addressed by the parliamentary resolutions concerned. All of the above amounted to a violation of their freedom of expression, their freedom of assembly, and their right to exercise their functions as elected officials (in particular, as members of the Bureau).

97. In addition, the first applicant claimed that the very fact that criminal proceedings had been brought and pursued against him had also amounted to a violation of his right to political participation, freedom of expression and freedom of assembly. The second applicant, who was also criminally prosecuted within the same proceedings, did not raise an additional complaint before the Court on those grounds.

2. All the applicants

98. All the applicants (applications nos. 29780/20, 33702/20 and 48537/20) also complained about the events described in paragraphs 32-45 above, namely the Constitutional Court's suspension and subsequent annulment of the decisions of the Bureau to allow the inclusion of certain draft resolutions in the agenda of the Parliament of Catalonia. They submitted that, from their perspective as members of the Parliament of Catalonia, the prohibition of debates on certain draft resolutions had constituted an interference with their freedom of expression and freedom of assembly under Articles 10 and 11 of the Convention and had amounted to a violation of Article 3 of Protocol No. 1 to the Convention, in so far as they had been prevented from carrying out their duties as parliamentarians.

B. Complaint under Article 18 of the Convention

99. The first applicant also alleged that there had been an ulterior motive for the criminal prosecution that had been pursued against him – namely, to prevent the members of the Parliament of Catalonia from holding debates on issues of public interest such as the form of the State, criticism of the King,

and self-determination in Catalonia, in violation of Article 18 in conjunction with Article 3 of Protocol No. 1 to the Convention and Articles 10 and 11 of the Convention.

C. Remaining complaints under Articles 6 and 13 and Article 1 of Protocol No. 12 to the Convention

100. All the applicants further complained that they had been discriminated against, in comparison to parliamentarians from other political groups, because of their political ideas supportive of the right of self-determination and the independence of Catalonia. The first applicant submitted, moreover, that when examining his second *amparo* appeal (see paragraphs 56-58 above), the Constitutional Court had changed its previous case-law on parliamentary immunity from prosecution as set out in the Constitutional Court's judgments nos. 30/1997 of 24 February 1997 and 40/2003 of 27 February 2003, and even 184/2021 of 28 October 2021 (see paragraphs 92-94 above), without having sufficiently reasoned its change of position.

101. The first applicant also complained of the criminal proceedings initiated against him under Article 6 of the Convention. Firstly, he complained of a lack of impartiality on the part of the members of the High Court of Justice of Catalonia who had declared the criminal complaint against him admissible, as well as on the part of the judges of the Constitutional Court who had dismissed his *amparo* appeal. Secondly, he complained about the length of the proceedings and, in particular, that the Constitutional Court had unduly delayed ruling on his request for interim measures.

102. Additionally, the first two applicants complained under Articles 6 and 13 of the Convention of the short time-limits – only three days (see paragraph 25 above) – within which they had had to lodge their appeals (*recurso de súplica*) against the *providencias* of the Constitutional Court of 10 and 16 October 2019, which had suspended the effects of Resolution no. 534/XII "on proposals for the real Catalonia" (adopted on 25 July 2019) and Resolution no. 546/XII "on the general political orientation of the Catalan government" (adopted on 26 September 2019), and which had been notified personally to the members of the Bureau (see paragraph 18 above). In their view, the short time-limits had represented an unforeseeable and arbitrary interpretation of the applicable procedural law, contrary to Article 6 of the Convention. They also complained that the Constitutional Court had not held an oral hearing within the enforcement proceedings for them to orally present their arguments, even though their rights had been at stake in those proceedings, which had violated their right to an effective remedy under Article 13 of the Convention.

THE LAW

A. Joinder of the applications

103. Given the common factual basis and the fact that the applications raise related issues under the Convention, the Court decides to join them in accordance with Rule 42 § 1 of the Rules of Court.

B. The Government's preliminary objections

1. Alleged incompatibility ratione personae and ratione materiae

104. The Government submitted that there was no right of self-determination under the Convention (they referred to *X. v. the Netherlands*, no. 7230/75, Commission decision of 4 October 1976, Decisions and Reports (DR) 7, p. 109). They also contended that there were no individual rights at stake, because the complaints had referred to a conflict between a national constitutional body (the Constitutional Court) and a regional parliamentary body (the Parliament of Catalonia). The Government raised this preliminary objection both with regard to the first two applicants, who had been members of the Bureau of the Parliament of Catalonia, and also with regard to all the applicants in their capacity as parliamentarians. The Government partially distinguished the present applications from the case of *Forcadell i Lluis and Others v. Spain* (dec.) (no. 75147/17, 7 May 2019). In that case, the applicants had also been members of the Parliament of Catalonia and, in the case of some of them, members of its Bureau. The Court had considered in that case that those applicants had acted in their individual capacity as members of the Parliament and, therefore, that the rights that had been invoked were individual and could not be attributed to the Parliament of Catalonia as an institution. In the present case, the Government contended that the first and second applicants' actions had been carried out in the exercise of their duties as members of the Bureau, and that in any case resolutions adopted by a parliamentary assembly, such as the Parliament of Catalonia, are acts of the institution, not of the parliamentarians as individuals. The Government considered that the applications were incompatible *ratione materiae* and *ratione personae* with the provisions of the Convention.

105. All the applicants asserted that they had lodged their complaints in an individual capacity and had relied upon their individual rights under the Convention. In particular, as members of the Parliament of Catalonia, they were entitled to respect for their freedom of expression and freedom of assembly, and to their rights to free elections and not to be discriminated against. They had the right to speak in Parliament, introduce initiatives, and to participate in debates and vote, for the reasons described in paragraphs 95-96 above.

106. The Court observes that essentially the same complaints were raised by the first and second applicants twice: once in their capacity as members of the Bureau of the Catalan Parliament, and a second time in their capacity as individual members of that Parliament (see paragraphs 95-98 above). In these circumstances, the Court finds it unnecessary to deal with the question whether those complaints should be considered as having been submitted on behalf of a public institution (the Bureau of the Catalan Parliament) in so far as the first and second applicants lodged them in their capacity as members of the Bureau. That is so because the same complaints, raised by the same applicants, in their capacity of individual members of that Parliament, cannot be considered as having been introduced on behalf of a public institution (see *Forcadell i Lluís* (dec.), cited above, §§ 19-20; see also *Zhablyanov v. Bulgaria*, no. 36658/18, 27 June 2023, concerning the removal of a deputy speaker of Parliament, whose complaints were assessed from the perspective of his individual capacity). In any event, all complaints raised in the present case are inadmissible for the reasons stated below.

2. Alleged loss of victim status

107. The Government submitted that all the applicants had lost their victim status with respect to their complaints under Articles 10 and 11 of the Convention and Article 3 of Protocol No. 1 to the Convention. In particular, the applicants had been able to discuss the issues referred to in the draft resolutions despite the ban imposed by the Constitutional Court. Specifically, Resolution no. 649/XII of the Parliament of Catalonia "in response to the Supreme Court judgment on the events of 1 October 2017" had been adopted on 26 November 2019 (see paragraph 46 above), and a motion "on self-government" had also been adopted on 12 November 2019 (see paragraph 47 above), notwithstanding the Constitutional Court's previous rulings. The applicants had been able to debate and participate in the vote on those proposals, which had, furthermore, been adopted. Therefore, in the Government's view, the applicants' right to political participation and their freedom of expression and of assembly had never been impaired and they thus had no victim status.

108. All the applicants disagreed with the Government's argument that the Constitutional Court's bans had not achieved their purpose on at least two occasions. Concerning, first, the Bureau's decision of 22 October 2019 to include in the Parliament's agenda the proposed resolution "in response to the Supreme Court judgment on the events of 1 October 2017" (see paragraph 46 above), the applicants submitted that what had been debated was an amended proposal which shifted the focus from the right to self-determination in Catalonia to the censorship by the Constitutional Court. As for the Bureau's decision of 29 October 2019 on the proposed motion "following the request to the government on self-government", they submitted that it had only been accepted for processing and subsequently

debated and adopted because the decision by the Constitutional Court to prohibit debate on it had been notified to the Parliament of Catalonia a few minutes after the debate in the Parliament had ended (see paragraph 48 above). The relevant prohibitions, in fact, remained in force at the time when they had lodged their applications. Hence, they claimed that they did have victim status to complain about the violation of their individual rights under the Convention.

109. The Court observes that the Government's argument is partly related to the question whether there has been an interference with the applicants' rights under the provisions relied upon by them and partly appears to concern an alleged loss of victim status. The first issue will be assessed in paragraphs 119-123 below. In respect of the latter issue, the Court does not need to make a specific pronouncement on it, since it reiterates that the complaints raised in the present case are in any event inadmissible for the reasons stated below.

C. Alleged violations of Article 3 of Protocol No. 1 and Articles 10 and 11 of the Convention

1. The parties' submissions

(a) Regarding the first applicant's complaints

(i) The Government

110. The Government submitted that the first applicant's complaints under Article 3 of Protocol No. 1 and Articles 10 and 11 of the Convention were inadmissible for non-exhaustion of domestic remedies and because they were premature. The Government considered particularly relevant in that regard the fact that the applicant had been acquitted in the criminal proceedings against him and that those proceedings were still ongoing, which meant that the domestic remedies had not been duly exhausted. Also, the fact that the criminal proceedings were ongoing meant that the domestic courts could still "make right" the alleged violations, either by way of an ordinary appeal or, subsequently and if needed, an *amparo* appeal to the Constitutional Court.

111. In the alternative, the Government disputed that there had been any interference with the applicant's political rights, freedom of expression or freedom of assembly as a consequence of the enforcement decisions given by the Constitutional Court against the Bureau, or of the subsequent initiation of criminal proceedings against him. They attached particular importance to the fact that a motion and a resolution with essentially the same content as the draft resolutions that had been declared unconstitutional had been debated in a plenary sitting of the Parliament and adopted (see paragraphs 46-48 above). The applicant had therefore been able to debate and participate in the vote on those parliamentary initiatives, which had even been adopted after the

deputies voted favourably. They also attached importance, as mentioned above, to the fact that the applicant had been acquitted within the criminal proceedings.

112. The Government submitted that, even should the Court find that there had been a limitation of or interference with the applicants' rights, including those of the first applicant, it had been in any event in accordance with the Convention. Firstly, the Government considered that the alleged interference with the applicants' rights was provided for by section 92 of Institutional Law no. 2/1979 on the Constitutional Court (see paragraph 83 above), which expressly established a procedure for the Constitutional Court to defend the effectiveness of its own decisions and seek their enforcement, including the possibility of imposing criminal liability in case of disobedience. The Venice Commission had also given a favourable opinion on the said provision (see paragraph 90 above). Secondly, in the wider social and political context in Catalonia at the time of the events, the objectives pursued by the impugned measures had been legitimate, namely to preserve public order and the protection of the rights and freedoms of others, and to ensure respect for the decisions given by the Constitutional Court, the body vested with the power to interpret the Spanish Constitution. Thirdly, the Government considered that, in the light of the circumstances of the case (the independence process in Catalonia), the interference had been necessary in a democratic society and proportionate to the aims sought, and had not prevented the free expression of the opinion of the people. Lastly, the Government contended that in a very similar situation (in the case of *Forcadell i Lluis and Others*, cited above, § 40) the Court had considered that the interference at issue in that case had been in accordance with the Convention and had thus declared that application inadmissible as manifestly ill-founded.

(ii) The first applicant

113. The first applicant considered that the Constitutional Court had established and enforced a general ban on the Parliament of Catalonia debating specific issues which he and other parliamentarians considered to be of public interest, namely the right to self-determination in Catalonia, monarchy as the system of government and criticism of the King as a symbol of the Spanish nation. Moreover, according to his submissions, he had been criminally prosecuted for having exercised his political mandate. Those two aspects of the authorities' reaction to the draft Resolutions in question had limited his right to exercise the democratic functions of a parliamentarian: in particular, to engage in debates on the right to self-determination in Catalonia, the monarchical form of the State and criticism of the King as a symbol of the Spanish nation. They had also amounted to an interference with his freedom of expression and freedom of assembly. The first applicant referred to the Court's decision in the case of *Forcadell i Lluis and Others* (cited

above, § 26) where, in a situation involving a similar *ex-ante* ban imposed by the Constitutional Court on a debate being held in the Catalan Parliament, the existence of an interference with Articles 10 and 11 of the Convention had been established by the Court. However, he also sought to differentiate the cases, and submitted that the Constitutional Court should not be forced to grant the suspension of a political debate in the Parliament of Catalonia merely at the request of the Spanish Government.

114. The first applicant further submitted that the prohibition of certain debates in the Parliament of Catalonia by the Constitutional Court had had no legal basis under domestic law, and that the enforcement proceedings, including the initiation of criminal proceedings, should not have been used for such purposes in the light of the declaratory and self-executing nature of the Constitutional Court's rulings. He also submitted that the interference had lacked foreseeability, since the Constitutional Court had never previously interpreted its own prerogatives in the way it had in the case at hand. He based his arguments in that regard on comparisons with judgments no. 30/1997 of 24 February 1997, no. 40/2003 of 27 February 2003, and no. 184/2021 of 28 October 2021 of the Constitutional Court (see paragraphs 92-94 above), where the court had ruled on the parliamentary immunity of members of parliaments and members of bureaux. Secondly, the applicant contended that preventing certain debates in the Parliament of Catalonia about relevant matters could not be considered to have any legitimate aim. Lastly, he submitted that the interference had not been necessary in a democratic society and had lacked proportionality and sufficient procedural safeguards. He argued that, even were the Court to consider that the aim pursued by the Constitutional Court was legitimate, an *ex-post* annulment by the Constitutional Court of any unconstitutional resolutions that might have been adopted would have been more respectful of the autonomy of the Parliament of Catalonia than the *ex-ante* prohibition on even holding debates on such resolutions, which had not been respectful of the right of all members of Parliament to express and debate their ideas.

115. The applicant considered that Article 3 of Protocol No. 1 not only protects the right to stand for election, but also parliamentarians' right to exercise their office and their right not to be deprived of their essential prerogatives as members of Parliament, so as to ensure their ability to carry out their duties as representatives effectively. In the applicant's view, the right enshrined in Article 3 of Protocol No. 1 would be meaningless if a sitting member of Parliament could face a blanket prohibition on discussing specific issues in the public interest in Parliament, or be coerced into voting in a predetermined manner.

116. The applicant contended that the mere initiation of criminal proceedings against him had had a chilling effect on the fulfilment of his parliamentary duties, and was thus a violation of Article 3 of Protocol No. 1 and Articles 10 and 11 of the Convention, and that he had thus duly exhausted

the domestic remedies by making use of all the available domestic remedies against the decision to initiate those proceedings. He moreover pointed out that his acquittal was not final since the public prosecutor's office had also lodged an appeal and had sought to overturn the acquittal, thereby making a final conviction still possible.

(b) Regarding the remaining applicants' complaints

117. The Government essentially reiterated the submissions it made in respect of the first applicant (see paragraphs 110-112 above). They disputed that there had been any interference with the applicants' political rights, freedom of expression and freedom of assembly as a consequence of the enforcement decisions given by the Constitutional Court against the Bureau, but submitted that, should the Court find that there had been an interference with the applicants' rights, that interference had been in accordance with the Convention, for the reasons outlined above.

118. The applicants, like the first applicant, submitted that the interference by the Constitutional Court had amounted to a violation of their political rights, freedom of expression and freedom of assembly as members of the Parliament of Catalonia.

2. The Court's assessment

(a) Applicability of Article 3 of Protocol No. 1 to the Convention, the Government's objection regarding the first applicant, legal classification of the complaints and the existence of an interference

119. The Court observes that the parties did not make any arguments as to the applicability of Article 3 of Protocol No. 1 to the Convention in their submissions, a matter which, as far as regional representative bodies are concerned, may depend on their powers under domestic constitutional law (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 53, Series A no. 113; *Repetto Visentini v. Italy* (dec.), 42081/10, § 23, 9 March 2021; and *Miniscalco v. Italy*, no. 55093/13, § 78, 17 June 2021). In the specific circumstances of the present case, given that it does not have the benefit of the parties' observations on this point and in view of its conclusion below that the complaints are in any event manifestly ill-founded, the Court will proceed on the basis of the assumption that Article 3 of Protocol No. 1 was applicable, without there being a need to make a ruling on the issue. The Court will therefore proceed to the assessment of the Government's objections.

120. Regarding the first applicant, in so far as the Government argued that his complaints were inadmissible for non-exhaustion of domestic remedies and because they were premature, the Court observes that he complained under Articles 10 and 11 of the Convention and Article 3 of Protocol No. 1 thereto about the sum of the measures taken by the authorities in reaction to the tabling for discussion and adoption by the Catalan Parliament of draft

resolutions similar to those that had already been declared unconstitutional. The interference complained of by the first applicant concerns the decisions of the Constitutional Court ordering the Bureau not to accept for processing the subsequent draft resolutions (see paragraphs 32-48 above) as well as the subsequent initiation of criminal proceedings against him on the charge of disobedience in respect of the Bureau's decisions to admit for processing those drafts resolutions in spite of the Constitutional Court's injunctions (see paragraph 49 above). He complained of the alleged *ex-ante* preventive nature of the enforcement proceedings, of the warnings contained in the relevant Constitutional Court decisions and of the alleged chilling effect that the mere initiation of criminal proceedings had had on his right to political participation and his freedom of expression and assembly. In these circumstances, in so far as it is undisputed that the first applicant employed all the available remedies in respect of the above measures, including in respect of the decision to initiate criminal proceedings, it cannot be considered that he has failed to comply with the exhaustion requirement under Article 35 § 1 of the Convention.

121. In addition, while the facts that the first applicant was acquitted and that there is an appeal pending against the outcome of the criminal proceedings are undoubtedly relevant with regard to the first applicant's complaints under Article 6 of the Convention, the Court is not convinced that his complaints under Articles 10 and 11 of the Convention and Article 3 of Protocol No. 1 thereto are premature. Such a finding would mean in essence that no interference with those rights could be considered to have occurred prior to the completion of the criminal proceedings, a finding that would be at odds with the first applicant's claim that the reaction of the authorities, taken as a whole, has already produced a significant and allegedly disproportionate impact on his above-mentioned rights (distinguish *Metis Yayincilik Limited Şirketi and Sökmen v. Türkiye* (dec.), no. 4751/07, § 35, 20 June 2017, where the criminal proceedings ended after a relatively short period of time with a final acquittal). In the circumstances of the case, and considering that the applicant was an elected official, the Court can accept that the impugned decisions of the Constitutional Court and the very initiation of criminal proceedings against the first applicant might be regarded as a limitation on his rights under Article 3 of Protocol No. 1 or under Articles 10 and 11 of the Convention.

122. The Court further notes that Article 3 of Protocol No. 1 is akin to other Convention provisions protecting various forms of civic and political rights such as, for example, Article 10, which secures the right to freedom of expression, or Article 11, which guarantees the right to freedom of association, including the individual's right to political association with others by way of party membership. There is undoubtedly a link between all of those provisions, namely the need to guarantee respect for pluralism of opinion in a democratic society through the exercise of civic and political

freedoms (*Ždanoka v. Latvia* [GC], no. 58278/00, § 115, ECHR 2006-IV). In addition, the Convention and the Protocols, where the respondent State concerned is a party to them, must be seen as a whole. The Court has previously stated that the rights under Article 3 of Protocol No. 1 and Article 10 of the Convention are interrelated and operate to reinforce each other. It has also recognised that, in the field of political debate, the guarantees offered by Articles 10 and 11 are often complementary (see *Primov and Others v. Russia,* no. 17391/06, §§ 91 and 92, 12 June 2014). The Court takes the view that all the applicants' complaints under Articles 10 and 11 of the Convention are ancillary to their main complaint, which is that they suffered a violation of their right to exercise political participation under Article 3 of Protocol No. 1 to the Convention.

123. The Court will therefore assess together the complaints under those provisions lodged by the first applicant in both his applications, and subsequently assess the violations of the same provisions alleged by the remaining applicants.

(b) Relevant principles

124. The Court recently summarised the general principles applicable to Article 3 of Protocol No. 1 in the case of *Kokëdhima v. Albania* (no. 55159/16, §§ 49-57, 11 June 2024). It reiterated that its power to review compliance with domestic law is limited. It is primarily for the national authorities, notably the courts, to interpret and apply domestic law, even in those fields where the Convention "incorporates" the rules of that law, since the domestic authorities are, in the nature of things, particularly qualified to settle the issues arising in this connection. This is particularly true when the case turns on questions of interpretation of national constitutional law (ibid., § 57). Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018).

125. The Court is mindful that, where an interference with Article 3 of Protocol No. 1 is in issue, the Court should not automatically adhere to the same criteria as those applied with regard to the interference permitted by the second paragraphs of Articles 8 to 11 of the Convention, and it should not necessarily base its conclusions under Article 3 of Protocol No. 1 on the principles derived from the application of Articles 8 to 11 of the Convention (see *Ždanoka*, cited above, § 115). Because of the relevance of Article 3 of Protocol No. 1 to the institutional order of the State, this provision is cast in very different terms from Articles 8 to 11 of the Convention (ibid., § 115). Article 3 of Protocol No. 1 is phrased in collective and general terms, although it has been interpreted by the Court as also implying specific individual rights. The standards to be applied for establishing compliance with Article 3 of Protocol No. 1 must therefore be considered to be less

stringent than those applied under Articles 8 to 11 of the Convention (ibid., § 115). Given that Article 3 of Protocol No. 1 is not limited by a specific list of "legitimate aims" such as those enumerated in Articles 8 to 11 of the Convention, the Contracting States are therefore free to rely on an aim not contained in that list to justify a restriction, provided that the compatibility of that aim with the principle of the rule of law and the general objectives of the Convention is proved in the particular circumstances of a case. Moreover, the Court does not apply the traditional tests of "necessity" or "pressing social need" which are used in the context of Articles 8 to 11 of the Convention. In examining compliance with Article 3 of Protocol No. 1, the Court has previously focused largely on two main criteria: whether there has been arbitrariness or a lack of proportionality, and whether the restriction has interfered with the free expression of the opinion of the people. It has always emphasised the wide margin of appreciation enjoyed by the Contracting States (ibid., § 115).

126. Notwithstanding the above, the Court considers that, for the reasons explained in paragraphs 122-123 above, in the specific circumstances of the present case, the applicants' complaints under Articles 3 of Protocol no. 1 and under Articles 10 and 11 need to be examined together. It will accordingly assess the interference with the applicants' political rights as well as with their freedom of expression and association under the more stringent test (lawfulness, legitimate aim and necessity).

(c) Justification of the limitations of the first applicant's rights and freedoms

(i) Lawfulness

127. Regarding the impugned decisions of the Constitutional Court, the Court notes that section 92 of Institutional Law no. 2/1979 establishes the rules governing the execution of the Constitutional Court's resolutions. That provision specifically provides for the possibility of the court ensuring the "effective implementation of its decisions" and provides that the court may "determine, in the judgment or decision or in subsequent measures, the body responsible for enforcement, the necessary enforcement measures required and, where applicable, it may decide on interlocutory matters relating thereto". Likewise, the Constitutional Court "may also quash any decisions that breach rulings delivered in the exercise of its jurisdiction, on the occasion of their enforcement". The above-mentioned Law recognises that "the parties may bring an action to request the enforcement [of a judgment or decision] as provided in subsection 1 [of section 92, and] may suggest to the court the necessary enforcement measures to ensure the effective implementation of its decisions" (see paragraphs 83-84 above). Section 92 also refers to the possibility that criminal liability could arise in case of disobedience. The Court observes that the above provision constitutes a valid legal basis for the impugned decisions of the Constitutional Court, which were aimed at

ensuring the effective implementation of its judgments nos. 259/2015 and 98/2019 (see paragraphs 10 and 17 above, respectively).

128. Regarding the decision to open criminal proceedings against the first applicant, the Court observes that it had a legal basis in Article 410 of the Spanish Criminal Code (see paragraph 86 above), which concerns the disobeying of judicial resolutions or decisions or orders of a higher authority, committed by an authority or public official.

129. As to whether the approach of the authorities should have been foreseeable to the first applicant, the Court observes that the relevant provisions of the Spanish Constitution were unambiguous as regards the procedure for its amendment. With regard to the Constitutional Court's previous case-law cited by the applicant, the Court observes that judgments no. 30/1997 of 24 February 1997 and no. 40/2003 of 27 February 2003 did not concern criminal proceedings initiated as a consequence of actions prohibited by previous Constitutional Court decisions (see paragraphs 92-93 above), and that in judgment no. 184/2021 of 28 October 2021 the Constitutional Court had dismissed an *amparo* appeal lodged by the then President of the Parliament of Catalonia and member of its Bureau, confirming that she had not been protected by parliamentary immunity in the circumstances of that case precisely because she had disregarded her duty to abide by Constitutional Court rulings (see paragraph 94 above). Furthermore, the Constitutional Court had interpretated the relevant provisions of the Spanish Constitution and Institutional Law no. 2/1979 in, *inter alia*, judgments nos. 259/2015 and 98/2019, the enforcement of which constituted one of the alleged interferences at issue in the present case: those judgments had set out in considerable detail the relevant principles and had clarified the reasons why the relevant Resolutions of the Parliament of Catalonia had been unconstitutional. Moreover, the applicant had been specifically warned by the Constitutional Court on multiple occasions (see paragraphs 22, 28, 30, 37 and 41) that, should he disregard its decisions, he and the other members of the Bureau who had been personally notified of them could incur possible liability, including criminal liability.

130. In so far as the applicant claims that enforcement proceedings had never been used before by the Constitutional Court to prohibit debates in a regional parliament, the Court refers to its case-law according to which the fact that a law or a legal provision is applied for the first time does not render it arbitrary or unforeseeable; there must always come a day when a given legal norm is applied for the first time (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 115, ECHR 2015; *Xavier Lucas v. France*, no. 15567/20, § 50, 9 June 2022; and *C.N. v. Luxembourg*, no. 59649/18, § 46, 12 October 2021).

131. To the extent that the first applicant must be understood as claiming that the acts in respect of which he had been prosecuted did not constitute a criminal offence and that he had not committed any criminal offence, the

Court considers that this issue – which is pending before the Spanish courts - is separate from the question before it, namely, whether the decisions to initiate criminal proceedings and bring charges against the first applicant had a foreseeable legal basis. On that latter point, the Court notes that the decision to declare the criminal complaint admissible was based on a preliminary analysis by the domestic courts, in which they considered that the facts reported in the relevant complaint – namely, that the applicant had disobeyed injunctions contained in decisions of the Constitutional Court, despite repeated and express warnings of the unconstitutionality of the relevant resolutions issued by the Constitutional Court as well as senior counsel of the Catalan Parliament – fell within the scope of the crime of disobedience committed by a civil servant provided for in Article 410 of the Spanish Criminal Code (see paragraph 50 above). The Court also notes that the High Court of Justice of Catalonia later acquitted the applicant, on the ground that it could not be established that he had openly refused to abide by a specific, clear and concrete mandate of the Constitutional Court (see paragraph 75 above), as was required by Article 410 to establish criminal liability for disobedience by a civil servant.

132. Without prejudice to its examination of any complaint that the first applicant may decide to submit in the event of an unfavourable final outcome of the pending appeal in the criminal proceedings, the Court is satisfied that the legal basis for the initiation of such proceedings was foreseeable.

(ii) Legitimate aim and necessity in a democratic society

133. The Court accepts the premise that the impugned decisions of the Constitutional Court and the initiation of criminal proceedings against the first applicant pursued a legitimate aim, namely the protection of the constitutional order and the procedures for revising the Constitution, and the protection of the rights of others. It will now assess whether the measures were proportionate.

134. The Court has consistently held that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or debate (see *Brasilier v. France*, no. 71343/01, § 41, 11 April 2006, and *Sanchez v. France* [GC], no. 45581/15, § 146, 15 May 2023) or on debate on matters of public interest (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV, and *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 46, ECHR 2007-IV). According to the Court, in a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression (see *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, no. 20641/05, § 70, ECHR 2012 (extracts) and the case-law cited therein).

135. The Court moreover recalls that it is the essence of democracy to allow diverse political programmes to be proposed and debated, even those

that call into question the way a State is currently organised, provided that they do not harm democracy itself (see *Socialist Party and Others v. Turkey*, 25 May 1998, § 47, *Reports of Judgments and Decisions* 1998-III).

136. In the present case, the Court notes at the outset that the underlying rationale of the impugned decisions was amply explained by the Constitutional Court. That court elaborated on the concept of constitutional loyalty, which must be understood as subjection to constitutional supremacy; this does not imply ideological adherence to the Constitution, but rather compliance with political rules and the existing legal order, and not attempting to transform the Constitution by means other than those contained in the constitutional and legal rules in force. The Constitutional Court explained that the Spanish Constitution was not a sacrosanct and immutable legal text: the possibility of constitutional reform is recognised in Articles 167 and 168 of the Constitution, and revisions can be requested by, among other State bodies, the assemblies of the Autonomous Communities (see paragraph 82 above).

137. Regarding concretely the effect of the impugned decisions on the first applicant's rights, the Court notes that public debate, inside or outside public institutions, on political projects for the amendment of the form of the State enjoys unrestricted freedom under the Spanish Constitution. The fact that respect for the procedures for constitutional revision and reform laid out in the Constitution is mandatory and that the Constitutional Court sought to put an end to debates aimed at circumventing, evading or simply dispensing with those procedures, in circumstances where there existed lawful avenues for the holding of such debates, cannot be seen as supressing the very possibility of freely expressing the opinions the applicants held or as being otherwise disproportionate to the legitimate aims pursued. The parliamentary resolutions that were annulled by the Constitutional Court knowingly excluded the use of constitutional channels for the revision of the Constitution in seeking to convert what is today the Autonomous Community of Catalonia into an "independent State" and to question the system of government as a parliamentary monarchy.

138. As the Constitutional Court reiterated in the contested decisions, both those questions could be freely discussed within the *Cortes Generales*, which is the national parliament and the constitutional body representing popular sovereignty in Spain. In accordance with the Spanish Constitution, the sovereignty of the nation, vested in the Spanish people, necessarily entails its unity, as proclaimed in Article 2 of the Constitution (see paragraph 82 above).

139. The Court also notes the important statements contained in the Constitutional Court's *autos* (see paragraphs 27 and 30 above) according to which, in a social and democratic State governed by the rule of law, such as that established by the Spanish Constitution, democratic legitimacy and constitutional legality cannot be set against each other to the detriment of the

latter: the legitimacy of an action or a policy of the public authorities essentially depends on its conformity with the Constitution and the legal system.

140. The Court acknowledges that the impugned decisions of the Constitutional Court banned certain debates from taking place again in the Parliament of Catalonia. It observes, however, that that ban was not imposed *ex ante* – as submitted by the applicant – and cannot be seen as having prevented the exercise of the rights of the members of that Parliament to freely express and present their ideas. In fact, the impugned measures were taken by the Constitutional Court after numerous debates had taken place freely and after the adoption of a series of similar parliamentary resolutions, which were annulled by the Constitutional Court *ex post facto*, with ample reasons as to why they were unconstitutional (see paragraphs 10, 11, 13, 15, 17, 26, 27, 30, 38 and 44 above).

141. As noted above, the resolutions passed by the Parliament of Catalonia which form the background to the present case must be analysed in the social, political and legal context of the independence movement in Catalonia (see paragraphs 8-31 above). The impugned resolutions purported to reaffirm, time and again, the initiation of a unilateral process of secession and the creation of an independent State, and to question parliamentary monarchy as a system of government and the stance of the Head of State, despite both issues being clearly outside the remit of a regional parliament, as was clarified by the Constitutional Court in judgments in which it repeatedly annulled similar resolutions as unconstitutional.

142. In that context, the Court is satisfied that the Constitutional Court exercised its power, in extreme circumstances, to implement its own previous decisions protecting the Constitution as the guarantor of the territorial integrity of the State. And it was only after it had exhausted all possible avenues, and in the light of the continued disregard for its rulings, that the Constitutional Court gave notice to the public prosecutor's office in case that office saw fit to pursue legal action against the first applicant and others for their disobedience.

143. The limitation of the applicant's freedom of assembly and freedom of expression as a parliamentarian, can therefore reasonably be regarded, even within the narrow margin of appreciation available to States under Articles 10 and 11 in the area of political speech, as proportionate and necessary in the circumstances of the case. That being so, seeing that there has not been arbitrariness and having regard to the less stringent nature of the requirements of Article 3 of Protocol no. 1, it follows, *a fortiori,* that it cannot be considered that the alleged limitation on the applicant's right to political participation, as derived from that provision, lacked proportionality or otherwise interfered with the free expression of the opinion of the people.

144. In these circumstances, and having regard to its finding above about the relevant legal basis for the impugned measures in Spanish criminal law,

the Court considers that the fact that criminal proceedings were initiated against the first applicant cannot be seen, as he presented it, as a "political" measure aimed at preventing him from exercising his duties as a member of the Bureau, or as a member of the Catalan Parliament.

145. The Court also takes note of the limited repercussions, if indeed there were any, that the mere finding admissible of the criminal complaint against him had on the effective performance of his parliamentary duties and his freedom of expression. As noted above, the issues reflected in numerous draft resolutions tabled by the first applicant had been repeatedly discussed in the Parliament of Catalonia and similar resolutions had been adopted. It is further relevant that the criminal complaint against the first applicant was declared admissible only after he had already ended his political mandate, and, in addition, that the trial resulted fairly quickly in an acquittal (see paragraph 75 above). Moreover, while the exact scope of Institutional Law no. 1/2024 of 10 June 2024 on the amnesty for the institutional, political and social normalisation in Catalonia (see paragraph 88 above) has not been clarified by the parties, it is relevant to note that the very possibility of the first applicant benefitting from an amnesty must have further attenuated the effect of the impugned measures on the Convention rights relied upon by the first applicant in the present case.

146. As already noted above, although the criminal proceedings against the first applicant are still ongoing following the submission of appeals by, among others, the applicant himself and the prosecutor, the applicant's complaints under Articles 10 and 11 of the Convention and Article 3 of Protocol No. 1 thereto only concern the fact that he has been prosecuted. The applicant is free to invite the domestic courts to rule on any other alleged violations of his rights and freedoms within the pending proceedings and, if necessary, submit an application to the Court in case of an unfavourable outcome.

(iii) Conclusion

147. Based on the above considerations, the Court finds that the first applicant's complaint that the impugned limitations of his rights under Articles 10 and 11 of the Convention and Article 3 of Protocol No. 1 thereto constituted unlawful, arbitrary or disproportionate interference contrary to the Convention requirements is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 and 4 of the Convention.

(d) Justification for the interference regarding all other applicants

148. The other 31 applicants in the present case were all members of the Parliament of Catalonia. The second applicant was also a member of its Bureau. Their complaints concerning the impugned decisions of the Constitutional Court were essentially the same as those of the first applicant.

149. For the reasons stated above, the Court, while acknowledging that the impugned Constitutional Court decisions had the effect of interfering with the applicants' wish to hold repeated debates on issues that had been the subject matter of previous parliamentary resolutions that had been declared unconstitutional, and to adopt similar resolutions, finds manifestly ill-founded the remaining applicants' complaints that the resulting interference with their political rights and their freedom of expression and of assembly was arbitrary or disproportionate.

150. In the light of the foregoing, the complaints of the other 31 applicants under Article 3 of Protocol No. 1 to the Convention and Articles 10 and 11 of the Convention must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

D. Alleged violation of Article 18 of the Convention (the first applicant) and of Article 1 of Protocol No. 12 thereto (all applicants)

1. The parties' submissions

151. The Government submitted that the first applicant had not suffered any restriction or limitation of his political rights, freedom of expression or freedom of assembly for spurious purposes. They did not accept that any of the applicants had suffered discrimination.

152. The first applicant alleged that his prosecution had not been in accordance with the Convention and that it had in fact pursued the purpose of preventing him and other members of the Parliament of Catalonia from holding debates on issues of public interest.

153. All the applicants submitted that the Constitutional Court's decisions had entailed discrimination on political grounds because debates in the Parliament of Catalonia on non-binding initiatives presented by members of Parliament in support of the right of self-determination in Catalonia, against the monarchical form of the State or criticising the King as a symbol of the Spanish nation had been prohibited while other initiatives presented by other members of the Parliament of Catalonia against the right of self-determination in Catalonia, favourable to the monarchical form of the State or supportive of the King as a symbol of the Spanish nation, had been allowed. The first applicant also complained that he had been discriminated against on political grounds with regard to the initiation of criminal proceedings against him, which he claimed had been contrary to the Constitutional Court's previous judgments.

2. The Court's assessment

154. The Court refers to its reasoning above concerning the manifestly ill-founded nature of the first applicant's complaints under Articles 10 and 11 of the Convention and Article 3 of Protocol No. 1 thereto, including regarding

the relevant context, the existence of lawful and constitutional means for the first applicant to express his views or promote the political project he espoused, and the legitimate aim of the impugned limitations and their proportionality (see paragraphs 127-147 above). The first applicant has failed to substantiate a convincing claim of an ulterior purpose in that regard.

155. Therefore, the first applicant's complaint under Article 18 of the Convention should also be declared inadmissible as being manifestly ill-founded pursuant to Article 35 § 3 of the Convention.

156. Concerning all the applicants' complaint that they were discriminated against on the basis of their political ideology, the Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others*, cited above, §§ 112-26), considers that said complaint falls to be examined under Article 14 of the Convention read in conjunction with Articles 10 and 11 of the Convention and Article 3 of Protocol No. 1 to the Convention.

157. The relevant principles in respect of the prohibition of discrimination have been summarised in the cases of *Beeler v. Switzerland* ([GC], no. 78630/12, § 93, 20 October 2020) and *Molla Sali v. Greece* ([GC], no. 20452/14, §§ 133-37, 19 December 2018, with further references); see also *Advisory opinion on the difference in treatment between landowners' associations "having a recognised existence on the date of the creation of an approved municipal hunters' association" and landowners' associations set up after that date* ([GC] request no. P16-2021-002, French *Conseil d'État*, § 72, 13 July 2022).

158. Applying the above principles, the Court reiterates that when bringing a discrimination complaint an applicant has to show that he or she has been treated differently from another person or group of persons placed in a relevantly similar situation. The applicants, however, have failed to substantiate how they have been unjustifiably treated differently to other persons placed in a similar situation – namely that of having repeatedly contravened the Constitutional Court's rulings. Nor is there is anything to substantiate the claim that the first applicant was prosecuted on the basis of discriminatory treatment owing to his political ideology – the Court refers to its reasoning above regarding the lawfulness of the impugned measures (see paragraphs 127-132 above). It follows that the complaints from all the applicants lodged under Article 14 of the Convention, read in conjunction with Articles 10 and 11 of the Convention and Article 3 of Protocol No. 1 to the Convention, are manifestly ill-founded and must be declared inadmissible pursuant to Article 35 § 3 of the Convention.

E. Remaining complaints

1. The parties' submissions

159. Concerning the first applicant's complaints about the alleged lack of impartiality of the judges in the criminal case against him, the Government noted, firstly, that he had been acquitted and submitted that even if the acquittal were to be overturned by the Supreme Court, he would then be able to lodge an *amparo* appeal, in which he would be able to complain about any alleged procedural violation suffered within the criminal proceedings leading to an allegedly unfair conviction. Secondly, the Government rejected the allegation that the length of the proceedings in the Constitutional Court concerning the request for an interim measure was in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

160. With regard to the first and second applicants' complaints under Articles 6 and 13 of the Convention, the Government considered, in the first place, that Article 6 was not applicable in its civil limb because the rights relied on by the applicants were not civil rights or obligations; they were, in the Government's view, purely political rights, outside the scope of Article 6 of the Convention. Alternatively, the Government noted that the impugned three-day time-limit to lodge an appeal against the Constitutional Court's *providencias* was provided for in section 93 of Institutional Law no. 2/1979 (see paragraph 83 above) and stated that the applicants had lodged their respective appeals outside of the three-day time-limit in each case. The Government contended that the applicants were aware of the short time-limits to lodge appeals against the Constitutional Court's *providencias* because they had observed them on other occasions where their appeals had been lodged within the deadline. Moreover, the applicants were experts in parliamentary proceedings and must have been particularly qualified to defend their rights inside and outside the parliamentary sphere. Concerning the absence of a public hearing, the Government pointed out that, under domestic law, it was not mandatory for the Constitutional Court to hold hearings and that it only did so exceptionally – generally when there were factual discrepancies rather than merely legal ones. Also, the absence of a hearing had not limited in any way the applicants' procedural rights or prevented them from having access to an effective remedy.

161. The first applicant complained under Article 6 of the Convention firstly that the lack of impartiality of the judges in the criminal proceedings against him had had an impact on those proceedings, irrespective of his subsequent acquittal. With regard to the complaint about the length of the proceedings, he stated that the Constitutional Court had purposely delayed making a decision on his request for interim measures for over six months and ultimately had not ruled on the matter (see paragraphs 53-56 above) precisely in order to allow the criminal proceedings against him to continue,

in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

162. Lastly, the first two applicants complained that their having had only three days (see paragraph 25 above) to lodge their appeals (*recursos de súplica*) against the *providencias* of the Constitutional Court of 10 and 16 October 2019 (see paragraph 18 above) had represented an unforeseeable and arbitrary interpretation of the applicable procedural law, contrary to Article 6 of the Convention. They also complained that the Constitutional Court had not held an oral hearing within the enforcement proceedings for them to orally present their arguments, even though their rights had been at stake in those proceedings, which had violated their right to an effective remedy under Article 13 of the Convention.

2. The Court's assessment

163. With regard to the alleged partiality of the judges involved in the criminal proceedings against the first applicant, the Court notes that the criminal proceedings against him are still ongoing following his acquittal and the appeals lodged against it (see paragraphs 79-81 above). His complaints in relation to the fairness of the criminal proceedings against him and, in particular, the procedural guarantees relating to the impartiality of the judges hearing the case are pending before the Supreme Court. The Court recalls that the Contracting States must be afforded the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. This reflects the subsidiary character of the machinery of protection established by the Convention in relation to the national systems safeguarding human rights (see, among many others, *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 138, 27 November 2023). Moreover, in principle an applicant cannot claim to be the victim of alleged breaches of his or her Article 6 rights in respect of criminal proceedings that have ended in acquittal (see, among other authorities, *Khlyustov v. Russia*, no. 28975/05, § 103, 11 July 2013, and *Osmanov and Yuseinov v. Bulgaria* (dec.), nos. 54178/00 and 59901/00, 4 September 2003) and the Court cannot speculate whether the first applicant's acquittal will be confirmed or overturned on appeal. Having regard to the foregoing, the first applicant's complaint under Article 6 § 1 of the Convention that he has been the victim of violations of his procedural rights is premature and hence based on speculation about future events. It must therefore be rejected for non-exhaustion of domestic remedies in accordance with Article 35 §§ 1 and 4.

164. With regard to the alleged undue delay in processing the first applicant's request to the Constitutional Court for interim measures, the Court reiterates that the domestic proceedings at issue concerned merely the admissibility of the criminal complaint against the applicant. Even assuming the applicability of Article 6 to those proceedings, the Court, considering that

the *amparo* appeal was lodged in September 2021 and the final judgment was given by the Constitutional Court in April 2022 (see paragraphs 53-56 above), that is to say within a period of six months, finds that such a period cannot be considered excessive in the light of the level of complexity and the particular circumstances of the case brought by the applicant (compare *International Bank for Commerce and Development AD and Others v. Bulgaria*, no. 7031/05, §§ 132-33, 2 June 2016). The complaint is unsubstantiated and therefore manifestly ill-founded. It must therefore be rejected in accordance with Article 35 § 3 of the Convention.

165. The alleged violation of Articles 6 and 13 of the Convention claimed by the first two applicants related to the proceedings regarding the appeals against the *providencias* of the Constitutional Court which were personally notified to the members of the Bureau and which suspended the effects of the Resolutions adopted on 25 July 2019 and on 26 September 2019 with content that was essentially identical to that of resolutions that had already declared unconstitutional (see paragraphs 18-23 above). Even assuming that Article 6 applies to those proceedings, the Court sees no reason why the applicants, who were represented throughout the proceedings by lawyers, could not have sufficiently prepared their appeals and lodged them within the legally established time-limit. Nor are there any indications that the lack of an oral hearing in the *amparo* proceedings prevented in any way the first two applicants from sufficiently putting forward their legal arguments, that those arguments were not duly examined by the Constitutional Court, or that the proceedings were otherwise unfairly conducted. The Court considers therefore that this complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 27 February 2025.

Martina Keller Deputy Registrar	Mattias Guyomar President

Appendix

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of birth Nationality	Represented by
1.	29780/20	Costa i Rosselló v. Spain	10/07/2020	**J. COSTA I ROSSELLÓ** 1976 Spanish	Self-represented
2.	33702/20	Campdepadrós i Pucurull v. Spain	10/07/2020	**E. CAMPDEPADRÓS I PUCURULL** 1961 Spanish	Gonzalo BOYE TUSET
3.	48537/20	Artadi i Vila and Others v. Spain	28/10/2020	**E. ARTADI I VILA** 1976 Spanish **A. BATET I CANADELL** 1979 Spanish **M. BUCH I MOYA** 1975 Spanish **N. CLARA LLORET** 1960 Spanish **F. DE DALMASES I THIÓ** 1970 Spanish **A. ERRA I SOLÀ** 1965 Spanish **L. FONT I ESPINÓS** 1958	Gonzalo BOYE TUSET

No.	Application no.	Case name	Lodged on	Applicant Year of birth Nationality	Represented by
				Spanish **J. FORNÉ I FEBRER** 1962 Spanish **E. FORT I CISNEROS** 1970 Spanish **G. FREIXA I VILARDELL** 1969 Spanish **I. GALLARDO BARCELÓ** 1966 Spanish **G. GEIS I CARRERAS** 1979 Spanish **A. GELI I ESPAÑA** 1978 Spanish **L. GUINÓ I SUBIRÓS** 1969 Spanish **S. LOUAJI FARIDI** 1968 Spanish **M. MACIÀ GOU** 1962 Spanish	

No.	Application no.	Case name	Lodged on	Applicant Year of birth Nationality	Represented by
				A. MADAULA I GIMÉNEZ 1978 Spanish **M. MADRENAS I MIR** 1967 Spanish **A. MORRAL I BERENGUER** 1957 Spanish **J. MUNELL I GARCIA** 1965 Spanish **T. PALLARÈS PIQUÉ** 1964 Spanish **J. PUIG I BOIX** 1947 Spanish **X. QUINQUILLÀ DURICH** 1969 Spanish **J. RIERA I FONT** 1963 Spanish **F. ROQUER I PADROSA**	

No.	Application no.	Case name	Lodged on	Applicant Year of birth Nationality	Represented by
				1967 Spanish **M. SALES DE LA CRUZ** 1983 Spanish **M. SOLSONA I AIXALÀ** 1976 Spanish **A. TARRÉS I CAMPÀ** 1967 Spanish **F. TEN I COSTA** 1968 Spanish **J. TORRA I PLA** 1969 Spanish	
4.	42224/22	Costa i Rosselló v. Spain	22/08/2022	**J. COSTA I ROSSELLÓ** 1976 Spanish	Self-represented