English

The process for holding the consultation regarding the political future of Catalonia: an evaluation

Report number 19

Barcelona,
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Generalitat de Catalunya
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1. Introduction

1.1 Purpose

This report will analyse the most relevant aspects involved in the process followed by the Catalan political institutions in order to represent the will of the citizens of Catalonia who voted in an overwhelming majority in elections on 25 November 2012 to the Parliament of Catalonia that they wished to be consulted via a referendum or non-referendum popular consultation on the political future of Catalonia[1].

In particular, this report shows that the process was carried out in a peaceful and democratic manner (with full respect to minorities), with scrupulous respect for people's basic rights – even extending the right to vote to certain additional groups in society (young adults between 16 – 18 and foreign nationals resident in Catalonia) and aiming to achieve dialogue and political agreement with the Spanish state with the express intention of complying with all existing legal frameworks and within the current legal system.

In the same way, the report also seeks to show how the response from all state institutions has been blank refusal of all proposals at all times. The State has explicitly rejected the possibility for negotiation and refused any discussion on the matter, forbidding itself from

[1] The parties which had clearly supported the right to decide as part of their manifesto won a total of 107 of the 135 seats in Parliament (50 for CiU; 21 for ERC, 20 for PSC, 13 for ICV-EUA and 3 for CUP).

exploring any of the possible legal pathways available for carrying out such a consultation. Its unfounded allegations were that all of the legal proposals suggested in Catalonia were unconstitutional, undermining the democratic principle and even going as far as to launch legal proceedings against the President and Vice President of the Generalitat and a minister in the Catalan Government.

Nevertheless, it is not the intention of this report to analyse in detail the political strategy employed by the State to impose diplomatic pressure abroad to discredit the process initiated by the Catalan institutions or to explain its manoeuvres (such as the leak of false police reports with the aim of changing people's opinions as a result of scare tactics and creating a whole array of unjustified doubts) with regard to the misinformation of the citizens of Catalonia.

Nor is it within the remit of this Council to be able to certify the origins of the cyberattack against the IT systems of the Generalitat on the eve of the participation process held on 9 November 2014 which affected, among other things, such sensitive areas as health and citizen safety. The attack was, due to its sheer size, obviously an intentional action which was financed anonymously and was designed to obstruct how the participation process went.

1.2 Background

This report focuses on the period after the Catalan Parliamentary elections which took place on 25 November 2012. In that election, the clear majority of votes went to parties which had promised in their manifestos to hold a consultation on the political future of Catalonia. The report ends when the participation process was held on 9 November 2014 and with the legal proceedings which had been launched as a result of the process, in which 2,350,000[2] citizens of Catalonia took part, still pending. It is important to highlight that during this entire period, the political efforts –and particularly those of the Catalan government –were concentrated firmly on attempting to find the appropriate legal way of carrying out such a consultation, and not in promoting either of the possible outcomes in any way.

[2] The total population of Catalonia is 7,518,903 inhabitants (Sources: IDESCAT [Statistical Institute of Catalonia]. Municipal Register of Inhabitants. INE [Spanish Statistical Office])

It is true, however, that the start of this whole process cannot be understood if one does not understand the background which explains and justifies it. Without going too far back into historical reasons (of which there are also several), the most important recent circumstances can help give some insight:

- The Parliament of Catalonia, which was restored in 1980 after the long dictatorship under Franco, had, on several occasions and under different circumstances, approved up to a total of eight resolutions which asserted Catalonia's right to self-determination. The constant political will for Catalonia to never give up its right to self-determination dates from the first resolution from 1989 which asserted that fundamental democratic principles must be upheld and which made it clear that Catalan nationalism has always considered Catalonia to be a nation, despite the fact that this was neither recognised explicitly in the Spanish Constitution of 1978 nor the Statute of Autonomy of Catalonia of 1979.

- As a result of the realisation – which has become more marked since the beginning of this century – that the so-called Spanish State of Autonomies in its final form has not sufficiently resolved Catalonia's aspirations and problems (there is a lack of real political autonomy and national recognition, and regional financing is unjust), the majority of Catalan political forces committed themselves to launching a reform of the 1979 Statute of Autonomy in order to increase and, above all, improve the quality and skills of the Generalitat and to review how it is financed and recognised on a national level. The reform proposals which were agreed upon by all but one of the parties with parliamentary representation were passed by 89% of the members of Parliament on 30 September 2005, after which they were passed on to the Spanish Parliament for debate and approval. The result was a new, notably watered-down Statute which nevertheless received approval from the Catalan people in a referendum held on 18 June 2006, albeit with very low turnout figures. Some of the fundamental aspects of this text, which had been approved by the Parliament of Catalonia, the Spanish Parliament and the Catalan people in a referendum, were then subsequently cut down even further, and the binding nature of the entire document was removed by the State in a ruling handed down by the Constitutional Court of Spain on 28 June 2010. The failure of the Statute from 2006 to be upheld was considered by many to be the expiry date of the Spanish

autonomic state model as considered by the Spanish Constitution of 1978 due to the fact that it was going to be impossible to achieve a solution that would have been even minimally acceptable with regard to the political status of Catalonia.

- The political defeat of this attempt to reform the Statute of Autonomy was accompanied by political attitudes from senior officials and institutions in the Spanish State that were considered profoundly humiliating in Catalonia. As a result, the feeling of discontent (which had originated most recently in 2005) of the population as a whole began to become more widespread as a result of the difficulties in negotiating a new Statute. This reaction was further driven by different civil society organisations such as the *Plataforma pel Dret a Decidir* [Platform for the Right to Decide]. However, it was clear that the incapacity of the new Statute to stop these autonomic setbacks that started a widespread popular movement would reject any future negotiation or understanding with the Spanish State in order to improve Catalonia's political status within the autonomic model as futile, and which would ultimately make a drastic U-turn towards independence for Catalonia. Between 2007–2010, this popular movement towards the right to decide and independence (which even involved the organisation of symbolic consultations which took place in over half of the country's 947 municipalities) became much more widespread and accelerated rapidly as shown in all of the surveys available on the topic.

- The ruling, which was handed down by the Constitutional Court of Spain in 2010 after an agonising wait of almost four years and which would annul each and every single one of the improvements that still remained in the reduced Statute from 2006, was seen by many Catalans to be the proof that the autonomous model set out in the Constitution in 1978 was no longer applicable and that, as a result, the search for new solutions to the problem would need to include the possibility of a new state for Catalonia and would involved a huge increase in the number of citizens prepared to break away from Spain. A large demonstration, organised bydifferent social bodies to protest against the ruling from 2010, brought together a million participants under the banner "*Som una nació. Nosaltres decidim*" ["We are a nation. We decide"] and showed the magnitude of the shift in attitude in public opinion in order to declare Catalonia a "nation", with all of the political consequences that that would entail.

- Another demonstration drew some 1.5 million participants to Barcelona on 11 September 2012 under the very clear slogan "*Catalunya, nou Estat d'Europa*" ["Catalonia: New European State"] and would be decisive in producing a new reaction in Parliament in which the Catalan nationalist parties would make the "right to decide" part of their political commitment.

- Days later on 20 September 2012, the Spanish Government rejected a final proposal from the Catalan Government for a new fiscal agreement demanding a more just regional finance system based partially on those used in the Basque Country and Navarre, citing unconstitutionality (albeit using legally unfounded arguments). This was despite the fact that the proposal accepted the fact that the "agreement" would need to be embodied in a State law (*LOFCA* – Organic Law regarding the Financing of the Autonomous Communities) and which contained promises that the region would continue to be a net contributor to help finance less wealthy autonomous communities in Spain.

  This blank refusal from the Spanish Government would be the definitive rejection of everything the Catalan Government was trying to achieve during that term in power: to minimise the shortcomings of the Statute from 2006. As a result, President Artur Mas announced snap elections on 25 September within the framework of general political debate in order to determine the level of support for the right to decide among the population as a whole. These are the specific events which led up to the process analysed in this document.

- The elections held on 25 November 2012 achieved the highest voting figures for any election after the post-dictatorship reform of the Generalitat – practically 70%, with parties supporting the right to vote gaining almost two-thirds of the seats available. The Catalan Sovereignty Declaration was issued on 23 January during the first plenary session of the new government with 85 votes in favour, 41 against and 2 abstentions and marked "the beginning of a process by which the citizens of Catalonia will be able to choose their political future as a people" in accordance with the principles of "sovereignty", "democratic legitimacy", "transparency", "dialogue" "social cohesion", "Europeanism", "legality", "main role of the Parliament" and "participation", and urges the Catalan Government to organise a consultation "as a priority during the current legislative period". Just a few weeks later on 13 March

2013, Parliament approved a new resolution with 104 votes in favour which would urge the Generalitat once more to "open dialogue with the Spanish Government in order to make it possible to hold a consultation on the future of Catalonia". The following sections will explain in detail each of the steps undertaken after this new resolution.

2. The offer to open dialogue and to set a date and the exact question for the consultation

The first significant event which took place in order to fulfil the parliamentary mandate to initiate the process for exercising the right to decide was the signing of the agreement on 12 December 2013 by six parties represented in the Parliament of Catalonia (CDC, UDC, ERC, ICV, EUiA and CUP) making up 64% of the members of the Chamber (87 out of 135). This agreement set the date for the consultation (9 November 2014) and the question which would be put to the citizens of Catalonia.

The Spanish Prime Minister stated at that time, and has continued to do so ever since, that it had been this "unilateral" decision which made it impossible to enter into any kind of negotiations with the Generalitat with regard to the proposed referendum or consultation.

Faced with this position taken by the Spanish Government, it is necessary to highlight the fact that the Generalitat had attempted to negotiate the terms of the consultation with the State by all means possible up until 12 December 2013. The State refused all attempts to even start negotiations, disputing the constitutionality of any consultation and belittling the political solidity of the proposal which it attributed to the fixation of a handful of leaders or, at most, limited and temporary social dissatisfaction resulting from the economic crisis. Ultimately, the setting of the date and question were not the grounds for suspending negotiations with the State for the simple reason that these negotiations had never even started because the State was never interested in their taking place.

In fact, as a result of the fruitless attempts to contact the State, the President of the

Generalitat wrote a letter to the Spanish Prime Minister on 26 July 2013 (which was made public a few days later), in which he expressed "the necessity to address dialogue and negotiation which will enable a consultation of the Catalan population to be held as soon as possible" and to which he attached the first report prepared by the *Consell Assessor per a la Transició Nacional* (CATN – Advisory Council on the National Transition)[3] which detailed five possible ways under which a consultation could be legally convened.

The response from Prime Minister Rajoy did not arrive until three days after the multitudinous show of support for the right to decide which took place on 11 September 2013 (and a full fifty days after having received the letter from Artur Mas): the so-called *Via Catalana* [Catalan Way towards Independence] which consisted of a 400-km long human chain running north to south through Catalonia. His response was that "dialogue acquires its real meaning from loyalty to existing institutions and with respect for the legal framework".

Furthermore, as a response to the reaction of the Spanish Prime Minister who had broken off any chance of dialogue stating that this was a result of the Catalan Government "unilaterally" declaring the date and question of the consultation, the President of the Generalitat made declarations on the television station TV3 on 16 December, at great possible internal political cost to himself, that he was prepared to negotiate, and modify if necessary, the date and question for the consultation with the Spanish Government. This offer by the President of the Generalitat was, once more, greeted with silence.

[3] The Advisory Council on the National Transition was created by Decree 113/2013, on 12 February, and is made up of recognised individuals from the different disciplines related to the national transition process. It was created as a result of the wish for the Government to have the best legal and technical advice during the process which was to be based on the principles of dialogue and legality and with the greatest possible consensus of all the parties involved. The first phase of the work carried out by the Council resulted in the presentation of the National Transition White Paper on 29 September 2014 and which can be found on the following web page: http://presidencia.gencat.cat/catn

3. Request to the State for the Generalitat to be delegated the powers to hold a referendum on the political future of Catalonia

3.1 Proposal presented by the Parliament of Catalonia to the Congress of Deputies

With the State refusing any possibility of coming to an agreement regarding a procedure whereby the citizens of Catalonia could decide freely their collective political future, the Catalan Parliament decided to request from the State the powers to hold a referendum in accordance with Article 150.2 of the Spanish Constitution. To this end, *Resolution 479/X of the Parliament of Catalonia by which it was agreed to submit to the Presiding Board of the Congress of Deputies the draft Organic Law delegating to the Generalitat of Catalonia power to authorise, call and hold a referendum on the political future of Catalonia4*[4], was approved on 16 January 2014.

This Resolution was passed with 87 votes in favour of a total of 135 members of Parliament, i.e. a resounding majority much higher than an absolute majority, even reaching almost two thirds of the Chamber. Spokespersons from the Parliamentary groups supporting this resolution (CiU, ERC and ICV-EUiA[5]) highlighted during the Parliamentary debate[6] that, given the lack of a political response to the request by the Generalitat to hold a consultation on the future of Catalonia, the request for the state powers to hold referenda within the framework of Article 150.2 of the Spanish Constitution was, of the five possibilities suggested by the CATN, the most suitable under those political circumstances for the possibility of holding a consultation. The two main arguments for justifying this option were as follows: on

[4] ref: Official Gazette of the Parliament of Catalonia, 239, 17 January 2014; BOCG-CD, Series B, 158-1, 24 January 2014

[5] Three PSC MPs voted in favour of the resolution and CUP abstained.

[6] ref: Sessions Diary of the Parliament of Catalonia, 44, 16 January 2014

the one hand, it was a possibility which, based on the recognition of state powers regarding referenda (Articles 92 and 149.1.32 of the Spanish Constitution), would result in the legal formalisation of the will of the Generalitat to hold an advisory referendum which was legal and which had been agreed with the State; on the other hand, it would result in debate and a vote in the Spanish Congress of Deputies where the political position of the Spanish State regarding the question of the consultation proposed by the Generalitat would be publicly and institutionally recorded. Directly related to these two arguments, it should also be noted that any possible acceptance by the Congress of Deputies of these proceedings to allow a draft Organic Law presented by the Parliament to be made would not have implied the literal approval of the Catalan initiative; it would have simply meant the start of a parliamentary procedure whereby the party in power and other State political forces would have been invited to present modifications to stimulate negotiation regarding the agreement between the Generalitat and the State to hold a legal referendum.

In fact, the Preamble to the single article regarding the draft Organic Law highlighted the willingness of the Generalitat to come to an agreement with the State regarding the holding of the consultation and the way in which its results would be implemented.

Before dealing with these two questions, the very beginning of the Preamble made it clear that any decision regarding the political future of a national community such as Catalonia should be articulated clearly as had been done in other similar political contexts (Quebec and Scotland) and in full compliance with regard to the democratic principle present in the Spanish Constitution (among others, in Article 1.1) and which puts forward consultative referenda as once of the main instruments in achieving this (Article 92 of the Spanish Constitution). The Preamble goes on to confirm that "*the calling and holding of a referendum on the political future of Catalonia could be compatible with the Spanish Constitution insofar as the latter does not exclude the possibility of a consultative referendum in the context of an autonomous community or set limits on the content of such a referendum*". Finally, the Preamble recognised that Article 149.1.32 of the Spanish Constitution gave the State the right to authorise consultations in the form of a referendum and that Article 150.2 of the Spanish Constitution granted the State the powers to delegate powers to the Autonomous Communities (by passing an Organic Law) on a State level and that in this case (a consultative referendum at an Autonomous Community level), Article 150.2 of the Spanish Constitution was applicable. It might be fitting at this point to remember, despite the

differences on a legal and political level, how the procedure undertaken in the UK to make it possible for a referendum on the independence of Scotland (Agreement between the Government of the UK and the Government of Scotland signed on 15 October 2012) is similar in that it consisted in transferring powers from central institutions to the region directly affected.

In any case, as we have already seen, the draft Organic Law from the Parliament of Catalonia proved the clear willingness of the Generalitat to come to a mutual agreement with the State with regard to both how any referendum would be held as well as any steps to be followed based on its results. These questions will now be dealt with separately. With regard to the first point, the Preamble establishes that for the draft Organic Law, "*the formula of delegation ad casum (for this particular case) was chosen in order to facilitate the application of Article 150.2 of the Spanish Constitution and to establish a necessary framework of coordination and collaboration between the Spanish State and the Generalitat of Catalonia*". In the same vein, the single article in the draft Organic Law establishes the following: "*The power to authorise, call and hold a referendum allowing the Catalans to express their opinion on the collective political future of Catalonia is delegated to the Generalitat of Catalonia under the terms agreed with the Spanish Government [...].*" With regard to the possible consequences of the referendum and the willingness of the Generalitat to come to an agreement with the State regarding their implementation, it can be seen that the single article makes it clear that this referendum is meant to be purely "consultative". Similarly, the Preamble stresses that "*[t]he consultative nature of the referendum should allow it to be applied in the specific case of the right to decide, on the understanding that it is the most suitable formula for initiating a democratic process. However, a referendum will not define the legal situation in itself, which will depend on subsequent political negotiation and implementation of the results of the referendum, in accordance with the principle of legality but without, of course, excluding the processes of constitutional reform*." The willingness to leave the possibility to negotiate both the date and the question in the referendum with the State and the desire to implement the results in accordance with current legislation can be seen clearly in these paragraphs and in the entire draft proposal.

Specifically it can be seen that, by applying Article 150.2 of the Spanish Constitution, the Generalitat was attempting to make use of one of the mechanisms established by the Constitution itself to hold a consultation on the political future of Catalonia. It was not

attempting to call a unilateral referendum on self-determination but was instead trying to reach an agreement with the State on holding a consultative referendum in order to find out the opinion of Catalan citizens and to subsequently negotiate how to implement the results within a legal framework, including any possible constitutional reform required.

3.2 The rejection of the draft Organic Law proposed by the Parliament of Catalonia by the Spanish Congress of Deputies: legal arguments against delegating the power to hold referenda given by the Spanish Government and State parties

The Congress of Deputies debated and voted on the consideration of the draft Organic Law proposed by the Parliament of Catalonia on 8 April 2014[7]. The Catalan proposal was rejected with 299 votes against, 47 in favour and 1 abstention. It should be mentioned that both the current party in power, the Peoples' Party (PP), and the leading opposition party, the Spanish Socialist Workers' Party (PSOE), were among the parliamentary groups voting against the proposal.

The Spanish Prime Minister, following the legal arguments explained in the document read at the beginning of the parliamentary session and reproduced in the session record, expressed the Spanish Government's opposition (and that of the Peoples' Party) in a speech in which he maintained that the draft Organic Law from the Parliament of Catalonia was not compatible with the Spanish Constitution for two reasons. On the one hand, this was due to a formal criterion whereby, in his opinion, the request made for the delegation of powers – the authorisation to call for popular consultations via a referendum – could not be carried out in the terms established in Article 150.2 of the Spanish Constitution. On the other hand, for a more intrinsic reason as it was the opinion of the Prime Minister that the object of the referendum – for the citizens of Catalonia to declare their will regarding their collective

[7] ref: Session Record – Plenary meeting of the Congress of Deputies, 192, 8 April 2014

political future – was a decision which would affect national sovereignty and so was a question for the entire Spanish population.

With regard to the form constitutional objection, the Prime Minister understood that the request for delegation of powers "*is not divisible and consists exclusively in authorisation*" and, therefore, "*what is being requested covers the entire content of the capacity [to delegate powers to authorise, call and hold referenda], and transferring this would be the same as removing any of its power, i.e. rendering the power of the Spanish State null and void*." In other words, the Prime Minister considered that the draft Organic Law would be contrary to the State's jurisdiction as given in Article 149.1.32 of the Spanish Constitution and that would contravene Article 150.2 which only permitted the delegation of powers belonging to the State but not the delegation of the powers as a whole (the State can authorise a referendum or not, what it cannot do is delegate to others the power to authorise one).

With regard to the unconstitutionality of the draft, he stated that "*the idea behind this referendum, whatever euphemisms you use to camouflage it, is to proclaim sovereignty which is not possible because the Constitution does not recognise it*" and that, as a result, "*Spanish sovereignty is a question for all Spaniards*." In other words, the Prime Minister maintained that holding a referendum on the political future of Catalonia violated Articles 1.2 and 2 of the Spanish Constitution which proclaim, respectively, the national sovereignty of the Spanish people and the indissolubility and indivisibility of the Spanish nation. Ultimately he understood that, consistent with Ruling 103/2008 of the Constitutional Court of Spain, a referendum of the characteristics given in the draft Organic Law affected national sovereignty and could not be changed according to a unilateral decisions made by the citizens of Catalonia but would need to be voted by the entire Spanish population and only within the framework of a constitutional reform.

This last argument was also supported by the Spokesman of the PSOE who stated: *"I'm sure it doesn't say anywhere in Article 92 of the Constitution that just a part of the population can be asked about something which affects us all [...]. We can't have a referendum in an Autonomous Community on a question which affects the entire Spanish population."*

3.3 Legal arguments to defend the constitutionality of the draft Organic Law regarding the power to authorise, call and hold a referendum on the political future of Catalonia

As we have just seen, the motives exposed in the Spanish Congress of Deputies to assert the unconstitutionality of the draft Organic Law presented by the Parliament within the framework of Article 150.2 of the Spanish Constitution are basically twofold and which can be summarised as follows: the first is that it would represent the delegation of a State power to the Generalitat which cannot be delegated; the second is that it involves the holding of a referendum in an Autonomous region on a topic which corresponds to a referendum which would need to be held for the entire Spanish population.

With regard to the non-delegable nature of the State power on authorising the call for referenda, it is important to remember that this is based on a concept according to which the subject being delegated is indivisible and that, as a result, if it is delegated then all possibility of intervention from the State is removed. There are three main legal arguments which contradict this idea supported by the Spanish Government and the majority of the Congress of Deputies. Firstly it should be noted that the draft Organic Law from the Parliament of Catalonia did not request general delegation of State powers, but simply a delegation "*ad casum*" (for this particular case alone); as was stated in the single article: the aim was to request the powers to authorise, call and hold "a" referendum on the political future of Catalonia. Secondly, it can also be seen in the text from the single article in the draft Organic Law that the State would not be dispossessed of all authority in the subject as it was stated clearly that the powers to authorise the referendum would be implemented "in the terms agreed with the Spanish Government". It should be noted here that, in accordance with Article 150.2 of the Spanish Constitutions, any Organic Law regarding the delegation of powers can include any and all control measures which the State would like to reserve. Finally, it does not appear sustainable that the power is, in its own right, non-delegable when (at least with regard to calling referenda), the Statute of Autonomy of Catalonia from 1979 (Art. 56.3) and the Statute of 2006 (Art. 223.1i) already anticipate that the Generalitat can

"call referenda regarding the reform of the Statute" after receiving authorisation from the State.

With regard to the supposed constitutional unviability of a referendum at a purely Autonomous regional level to decide the political future of Catalonia, we can state clearly that holding the referendum does not take any powers away from the citizens of Spain as the holder of national sovereignty as established in Article 1.2 of the Spanish Constitution. Equally, as is explained clearly in both the Preamble and the single article of the draft Organic Law, the referendum to be held is of a "consultative" nature, i.e. it is not a referendum which would result directly in Catalonia achieving self-determination or unilateral secession from the Spanish State; it would merely result in "negotiation" regarding the procedure to start constitutional reform between the Generalitat and the State within the legal framework. It should be noted that the constitutional inadmissibility of a consultative referendum on the future political configuration of Catalonia has been defended by several Spanish experts in constitutional matters such as Professor Rubio Llorente, former Vice President of the Constitutional Court of Spain and former President of the Council of State. From this point of view, the constitutional viability of a consultative referendum at an Autonomous regional level regarding the political future of Catalonia is based on the democratic principle set out in Article 1.1 and in the prevision for consultative referenda in Article 92 of the Spanish Constitution, whereas the intervention of the Spanish people as a whole (as guardians of national sovereignty) would be reserved for a possible future binding referendum on constitutional change.

This latter position seems to have been recognised by the Constitutional Court of Spain in Ruling 42/2014 in which it does not reaffirm the doctrine established in Ruling 103/2008 regarding the so-called Ibarretxe Plan. In this latter ruling, it can be understood that there is no possibility for any consultation of an Autonomous Community if this could affect national sovereignty, as in this case a referendum for constitutional change is only possible if it involves the entire Spanish population. As Ruling 42/2014 declares that the references to the right to decide of Catalonia as contained in Resolution 5/X of Parliament of 23 January 2013 comply with the Constitution, it can be deduced that a consultative referendum agreed with the State, in which the Generalitat requested to hold regarding the political future of Catalonia via the delegation of powers from the State, is permitted by the Constitution. It should, however, be noted that the ruling handed down on 25 February 2015 has reiterated

the arguments given in Ruling 103/2008, however it has neither approved not rejected the doctrine from Ruling 42/2014.

In fact, there are enough elements in Ruling 42/2014 which would defend (without the need for constitutional change beforehand) the right to hold a consultative referendum in Catalonia to find out the will of its people whether or not they wanted to be a part of the Spanish State or not. These elements are as follows: firstly, the emphasis that the ruling places on the democratic principle as the main value in the regulation and basis of constitutional admissibility for Catalonia; secondly, the distinction the Constitutional Court makes between preparatory activities for exercising the right to decide and the effective achievement thereof; thirdly, the ruling does not explicitly exclude any instrument for carrying out preparatory activities for exercising the right to decide whereas the requirement for constitutional change with a referendum including the entire Spanish population is only legally binding for the phase involving actually achieving the right to decide; finally, the reference to the Opinion of the Supreme Court of Canada from 20 August 1998 which is used in Ruling 42/2014 to reinforce the affirmation that an Autonomous Community cannot unilaterally call a referendum on self-determination but, as is widely known, the decision from the Supreme Court of Canada does not in any way question, quite the opposite in fact, that Quebec or any other province can organise a referendum to find out its political will regarding a proposal for secession.

Ultimately, from a purely legal viewpoint, Catalonia does not have the sovereign right to unilaterally decide its collective political future; it can, however, be consulted on the issue within the framework of Spanish constitutional law.

4. New offers for negotiation and social support for exercising the right to decide

Just a few days after the Congress of Deputies rejected the request to delegate the powers to call a referendum, the Prime Minister once again accused the Parliament of Catalonia and the Generalitat in a press conference (12/04/14) of making unilateral decisions which made any kind of dialogue impossible: *“I have to say this absolutely clearly: this is a process which*

consists of one unilateral decision after another. It's impossible to have any kind of dialogue that way." Yet again in the following days, President Mas stated time and again in interviews with different media outlets that he was open to dialogue with Mr Rajoy in order to broach the subject of the will of the majority of the Catalan population to participate in a consultation.

The Catalan President asked the Spanish State to follow the example of the UK:

- "*We need to sit down and negotiate, come to an agreement and let the people vote. That's the British formula. I would like Spain to do the same and to have the same mentality*" – interview on the BBC, 18/01/14
- "*I have always said that if the State has something to offer we need to vote and to choose democratically between what the State offers and the question agreed in Catalonia*"– interview in La Vanguardia, 02/02/14
- "*The time for making an offer (from the State) has not completely passed because we can't stop the Spanish State from one day reacting and offering a new constitutional possibility [...]. It would be quite anti-democratic of the Catalans to then say we didn't want to hear it. And what condition would have to apply so that it can be accepted? It would need to be agreed through the ballot box: voting between Spain's offer and the question we agreed on here in Catalonia*" – interview in Ara, 02/03/14
- "*I don't want to be alone in this process; if the Spanish State makes an offer then the best way of evaluating it is via the ballot box*" – interview in Ara, 02/03/14

Before the summer, President Mas repeated again on several occasions that he was prepared to negotiate the terms with Prime Minister Rajoy and to modify the date or question if necessary:

- "*As I have said time and again, I'm prepared to talk when and wherever to Prime Minister Rajoy. Without any conditions from either side*" – meeting in Parliament after a question from the Peoples' Party Group[8], 07/05/14
- "*If there is a solid, credible offer with guarantees from the Spanish State [...] my only condition is that it must go through the ballot box [...] and the final decision must be*

[8] ref. Sessions Diary of the Parliament of Catalonia – Plenary meeting, session no. 32 first meeting p. 21

taken by the people of Catalonia and that decision can only be taken at the ballot box"– conference at the Tribuna Girona, 09/05/14

- "*If the Spanish government says OK, we are willing to accept the consultation in Catalonia, we are committed to let Catalan people vote, and as they did in the UK, we have to sit at the table and open negotiations [...]. You can talk about the terms of this referendum or this consultation, you can talk about the date, you can talk about the question*" – interview on Bloomberg, 15/07/14

On 23 July 2014, Joan Rigol, the Coordinator of the National Pact for the Right to Decide[9] wrote a letter to Prime Minister Rajoy in which he requests he *"enters into dialogue with the Government of the Generalitat of Catalonia in order to not impede the legal right of Catalans to vote*" in accordance with the legal principles in the Constitutional Court of Spain's ruling regarding the Declaration of Sovereignty.

Finally on 30 July, and more than a year after the last public meeting between the leaders of the Generalitat and the Spanish Government, another meeting between the two politicians takes place at the Moncloa Palace, the seat of the Spanish Government. At the close of the meeting, President Mas states that there has been no change in the disagreement with the Spanish Prime Minister with regard to the consultation planned for 9 November, and explains[10] that he had made clear to the Spanish Government that he intended to hold the vote *"legally and, if possible, with the agreement of the State".*

Catalan National Day, 11 September, would be turned in 2014 into another popular clamour for the right to vote with 1.8 million people (which corresponds to approx. 24% of the entire population of Catalonia) forming a symbolic V along two of Barcelona's main avenues.

In fact, this social support for the right to decide has been one of the defining characteristics of this first stage in the process. Significant proof of this fact are the over 3,000 social entities and the 920 of a total of 947 regional councils in Catalonia (which approved motions in

[9] The *Pacte Nacional pel Dret a Decidir* (PNDD) [National Pact for the Right to Decide] was formed on 26 June 2013 and consists of different institutions and political parties supporting the right to decide, as well as other leading municipal, cultural, educational, communication, social, civic, sporting, generational, trade union, business and professional Catalan associations and bodies. More than 4,200 different bodies have joined the just under 50 founding members.

[10] Bloomberg, El Mundo, Ara.

favour of holding the consultation in town hall meetings) which had joined the National Pact for the Right to Decide – constituted at the Parliament of Catalonia in June 2013 – by July 2014.

With all of the possible lines of negotiation to call a referendum or consultation in agreement with the State exhausted, the Generalitat decided to undertake the only legal pathway still available to it as the State had launched an appeal against the Catalan law on consultative referenda (4/2010) with the Constitutional Court of Spain and, although it had withdrawn the suspension, there was no point in trying to apply it as the Law itself establishes that the power to call referenda fell within the remit of the State Government alone. As a result, the Generalitat was left with no other option than to apply the law on non-referendum popular consultations which had been going through Parliament since the previous legislative period.

5. Approval of the Non-Referendum Popular Consultations Act and the Decree calling for a consultation

5.1 The Catalan Non-Referendum Popular Consultations and Other Forms of Citizen Participation Act

On 19 September 2014 the Parliament of Catalonia approved the *Non-Referendum Popular Consultations and Other Forms of Citizen Participation Act* with 106 votes in favour and 28 against which was based on a draft law put together based on that set forth in Article 122 of the Statute of Autonomy which gave the Generalitat the exclusive competence to regulate and call any popular consultation within its remit, apart from that of a referendum.

The draft Law with the approval of the ruling by the Parliamentary Committee on Institutional Affairs was passed to the Council for Statutory Guarantees. The Council decided by majority in its Ruling 19/2014 dated 19 August that the Draft complied with the Statute of Autonomy

and the Constitution. The Ruling was passed despite votes from four councillors who disagreed with the majority, considering due to different reasons that non-referendum popular consultations as presented in the draft were actually referenda, and with one vote against due to the councillor considering that the consultations as presented in the draft exceeded the competence of the Generalitat. We will return to this debate later when analysing the arguments given as part of the Spanish Government's challenge to the Law.

Without entering into details regarding the regulations as established in the Law[11] and

[11] Law 10/2014 of 26 September regarding non-referendum popular consultations and other forms of citizen participation published in the Official Gazette of the Generalitat de Catalonia no. 6715 of 27 September, is covered in the exclusive character that the Statute of Autonomy (Article 122) gives the Generalitat the right "to establish the legal framework, methods, procedure and holding of surveys, public audiences, participatory forums and any other instrument of popular consultation by the Generalitat or its local representatives within the boundaries of their powers except for those outlined in Article 149.1.32 of the Constitution". The Constitutional Court of Spain declared that this statutory article complied with the Constitution in Ruling 31/2010 of 28 June (FJ 69), provided that the exception as referenced to Article 149.1.32 of the Spanish Constitution is understood as the concept of a referendum in its entirety and not just the authorisation from the State to call one. In fact, the Parliament of Catalonia approved Law 4/2010 of 17 March regarding popular consultations via referendum before this ruling. This Law was challenged by the Spanish Government in the Constitutional Court of Spain, resulting in its automatic suspension. However, the suspension was lifted shortly afterwards (interlocutory appeal from 9 June 2010), meaning that the Law was in force at the time when the Law on non-referendum popular consultations was drawn up.

Law 10/2014 covered two methods of consultation and citizen participation: *non-referendum popular consultations* on the one hand and *citizen participation processes* on the other – this includes surveys and public citizens' meetings. The Law, which is supplementary with regard to other participatory instruments and mechanisms which are envisaged specifically in sectoral laws.

In the case of non-referendum popular consultations, the Law is defined as the "calling by the competent authorities, in accordance with the provisions of this Law, of legitimate persons in each case to manifest their opinion on a specific action, public decision or policy by a vote" (Article 3.1). There are several different possible methods depending on certain criteria: depending on who is advocating them, a different is made between an institutional and a citizens' initiative, and depending on their scope, national and local consultations. Institutional consultations on a national level can be led by the President of the Generalitat or the Government, Parliament or municipal councils whereas local consultations can be promoted by town councils, regional councils, county councils or *vegueria* councils and the mayor or president of local entities in accordance with the Law. Citizens' initiatives require the constitution of a promoting committee consisting of one or more non-profit-making legal entities or three or more individuals, and with the support of a certain number of signatures, which is 75,000 in the case of national initiatives (the figure is different for local initiatives and depends on the population of the municipalities affected). The power to call a consultation belongs to the President of the Generalitat or the President of the corresponding local entity and in accordance with the requirements as established in the Law and, where applicable, specific local guidelines.

without forgetting that the Law only constitutes overall policy regarding mechanisms for citizen participation which includes non-referendum popular consultations and other instruments of participation, we should draw attention to the three elements which are particularly relevant to calling a consultation on the political future of Catalonia:

- Firstly, as it stands we are dealing with a participatory process, the results of which do not have any binding effect. This is stated clearly in the Law, both with respect to non-referendum popular consultations (Article 8) and also with regard to other mechanisms for citizen participation (Article 51).
- Secondly, the definition of the persons who could be called to participate in the non-referendum popular consultations shows a clear willingness to open up participation to those groups in society which may have an interest in consultations. Specifically, unlike the electoral roll which is used for local, Autonomous and state elections and referenda, participation was extended to everyone over the age of sixteen who:
    - was politically classed as a Catalan, including those who are living abroad,
    - was a citizen of a member state of the European Union and was registered as resident in Catalonia for at least one year uninterrupted immediately prior to the consultation,
    - was a citizen of any other country and was registered as resident in Catalonia for at least three years uninterrupted immediately prior to the consultation.
- Thirdly, the system of guarantees regarding non-referendum popular consultations is different to that established in electoral legislation for electoral and referendum processes as it is neither based on electoral administration nor electoral jurisdiction[12].

[12] Split into three types of body: a Control Committee (made up of seven members appointed by Parliament who act independently and who are in charge of the supervision, guarantee and control of the processes which are part of the consultation), monitoring committees at a regional level (a total of seven which correspond to the governmental territorial delegations in Catalonia: made up of five members appointed by the Control Committee for each consultation process on the motion from the Catalan Bar Association Council and two from the Catalan Association of Political Scientists from the Local Government Councils and from the Government with basic management and monitoring functions for the consultation they were appointed to) and the consultation forums

The two last elements (the non-coincidence between the subjective nature of the participants and the electoral census, and the specific system of guarantees which is different to that in the case of an election) are especially relevant in the political and legal debate regarding the constitutional legitimacy of non-referendum popular consultations as stated in the Constitutional Court of Spain's own jurisprudence. This, in effect, has distinguished between other popular consultations in general and referenda as specific consultations, based precisely on these elements. Ruling 103/2008 dated 11 September of the Constitutional Court of Spain specifically addressed this issue:

> "*A referendum is therefore a type of "popular consultation" with which the opinion is not sought of any group on any matters of public interest through any types of procedure, but it is rather a consultation, the object of which refers strictly to the opinion of the electoral body (expressing the wishes of the people; thus CCJ 12/2008 of 29 January LC 10) organised and externalised through an electoral procedure, that is based on the census, managed by the electoral authority and ensured with specific jurisdictional guarantees, [...] In order to consider a consultation as a referendum or more precisely, to determine whether a popular consultation is verified "via referendum" (art. 149.1.32 EC) their convocation thus requires an authorisation reserved for the State, and has to address the identity of the subject consulted, so that provided that this is the electoral body which is manifested through the various electoral procedures, with their concomitant guarantees, we would then be talking about a referendum-based consultation.*" (LC 2)

It is clear, therefore, that the Catalan Law is designed to cover a form of consultation which is not considered by the Constitutional Court of Spain to be a referendum. Nevertheless, this has still been the main argument against the Law from members of the Council of Statutory Guarantees and the Spanish Government in their appeal, questioning the Law's constitutionality. This debate will be looked into in a little more detail further on.

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where the voting takes place (made up of a president and two administrators, appointed by drawing lots from all of the people registered as a participant in the forum; participants can choose not to participate).
It should be noted that this system of guarantees based on electoral committees (central, Autonomous regional, provincial and regional mainly consisting of legal professionals) and polling stations (appointed by lots but with obligatory participation unless documented justification can be provided).

5.2 Decree on calling the non-referendum popular consultation on the political future of Catalonia on 9 November 2014

Two weeks after approval of the Law on non-referendum popular consultations, the President of the Generalitat decided to call a non-referendum popular consultation on the political future of Catalonia in accordance with that Law and via Decree 129/2014[13] on 27 September 2014.

The main features of the Decree were as follows:

- The date and the question were those agreed on 12 December 2013 by Convergència i Unió, Esquerra Republicana de Catalunya, Iniciativa per Catalunya Verds – Esquerra Unida i Alternativa and Candidatura d'Unitat Popular[14].
- The scope of people called to participate was broader than that permitted by Law. This included: persons over the age of sixteen who have the political status of Catalans, including Catalans living abroad or persons who are nationals of European Union member states who can prove that have lived continuously in Catalonia during the year prior to the call for the consultation or persons who are nationals of third states and are registered in the Population Register of Catalonia who can prove legal residency in Catalonia for the continuous three-year period immediately prior to the call for the consultation.
- The consultation was presented, based on the short, concise statement of motives included in the Decree itself, as an instrument for participation for the citizens of Catalonia in affairs corresponding to the Generalitat, and cites expressly the legal authority to exercise the initiative for constitutional reform as recognised in both the Constitution (Articles 87 and 166) and the Statute of Autonomy (Article 61). These circumstances, made explicit in the text of the Decree itself and in conjunction with the non-binding character of the result, are particularly important when evaluating the constitutional legitimacy of the consultation in the State's challenge to it as explained in the following section.

[13] Published in the Official Gazette of 27 September 2014 in an annexe (Official Gazette no. 6715A)

[14] The text of the question was as follows: "Do you want Catalonia to become a State? If the answer is affirmative, Do you want this State to be independent?"

5.3 Challenges to the Law on popular consultations and the Decree calling for a consultation on 9 November ("9N") and its subsequent suspension

5.3.1 The challenge procedure and the suspension of the Law and Decree

Both the Law on popular consultations and the Decree calling for a consultation on 9 November were appealed against by the Spanish State at the Constitutional Court with an appeal each which was admitted and resolved via Rulings 31/2015 and 32/2015 of 25 February 2015. The admission of the appeal resulted in automatic suspension of the section of the Law and Decree under appeal. It should be noted that both the challenge and the admission of each of the corresponding appeals took place with a speed and expediency which is absolutely unusual.

in fact, both the Law and the Decree were published in the Official Gazette of the Generalitat de Catalunya on 27 September. The Council of State was called together urgently for an extraordinary meeting on Sunday 28 in the evening and which would go on to hand down its preliminary mandatory decision as required by the Spanish Government the very same day. For its part, the Government held a special session of the Council of Ministers on 29 September in which it decided that both acts were to undergo a legal challenge and so the Legal Council for the State presented the appeal to the Constitutional Court of Spain on 29 September. Finally, the plenary session of the Constitutional Court of Spain which had been convened urgently – for the first time in history – admitted the appeal directly on the 29.

This process shows a series of very unusual characteristics. What is most surprising, however, is not the speed and extraordinary nature with which the three bodies were convened – even though the timings were legitimate, this does not detract from the fact that they were very unusual (especially in the case of the Council of State and, most surprisingly, the plenary session of the Constitutional Court of Spain) – or the extreme speed at which their decisions were made (bearing in mind they hand down sentences on extremely complex legal issues

and on certain documents the content of which, such as the Decree calling for the consultation, was not even known until that moment), especially in the case of the Constitutional Court of Spain: on the very same day on which the Government presented its appeal, there was an extraordinary meeting of the plenary Council in which all of the members came together to decide directly – without any expert report, which is the usual procedure in such cases – that the appeal should be admitted, thereby resulting in automatic suspension of the Law. The Constitutional Court of Spain then went on to explain the immediate effects that this would have for all the parties involved as soon as the ruling was published in the Official State Gazette (which happened to take place the very next day, 30 September). Despite the fact that the admittance of the appeal documents and the consequent suspension were legally obligatory, by accelerating its decision unnecessarily and without any known legal precedents, the Constitutional Court of Spain raised serious questions regarding its impartiality.

As we have seen, the appeal launched against the Law and Decree with the Constitutional Court of Spain automatically resulted in their suspension, given that the Spanish Government made use of the procedural privilege given to it by the Organic Law at the Constitutional Court of Spain whereby simply invoking Article 161.2 of the Constitution results in the automatic suspension of the acts under appeal for a maximum of five months during which the Constitutional Court must either uphold or reject the suspension. The Constitutional Court of Spain, as has been seen, made it explicit that this suspension would be effective immediately for all parties involved and for third parties as soon as it was published in the State Official Gazette, which happened the very next day. As a result of this immediate automatic suspension, the actions involved in implementing the Law and Degree became very limited, practically involving a few prior preparatory actions such as the creation of a file containing personal data related to the Register of participants in non-referendum popular consultations[15] and the nomination of the members of the Control Committee as detailed in the Law proposed by the Generalitat[16].

[15] Order GRI/286/2014 of 19 September, regarding the files containing personal data managed by the Department of Government and Institutional Relations, Annexe 1.

[16] Designated by the Parliament of Catalonia on 1 October 2014 and appointed "for the purposes of the corresponding period of validity" by Decree 132/2014 of the President of the Generalitat dated 2 October, regarding the appointment of the members of the Control Committee for non-referendum popular consultations.

5.3.2 Motives for the appeal and the legal and political debate on the consultation

The main motives behind the appeal against Law 10/2014 and the Decree calling for a consultation lodged by the Spanish Government and which form the basis for the legal and political debate on this question can basically be summarised in two different areas: (i) on the one hand, the concept of the referendum and how it differs to non-referendum popular consultations; (ii) on the other hand, the powers held by the Generalitat regarding the subject of the consultation. Naturally, it is not a question of examining in detail the different arguments for or against for these two essential questions, but instead of making a few basic observations on the questions themselves. The debate makes it clear that the Spanish Government has decided to opt for a restrictive and limiting interpretation of current Spanish Constitutional law, whereas it could have made other interpretations which would allow the consultation to be held by the Generalitat in a manner which would not break any constitutional laws.

The first basic question we need to ask ourselves is the actual nature of the citizens' consultations as detailed in Law 10/2014 and, as a result, of the consultation called by the Decree of the President of the Generalitat 129/2014. The Law clearly states that we are dealing with non-referendum popular consultations, whereas the Government insists that they are in fact referenda and that the Generalitat is contravening the law (the Constitution) by presenting them differently. This question is vitally important as referenda must be regulated – in principle[17] – and authorised by the State, whereas non-referendum popular consultations correspond solely to the powers of the Generalitat (Article 122 EAC). The distinction was addressed by the Constitutional Court of Spain in Ruling 103/2008 dated 11 September in which, after admitting that there was the possibility of having popular consultations which were non-referendum, it established that the elements to differentiate between them were the scope of people to be consulted and the procedure and guarantees

[17] This topic is still under debate and will be resolved by the Constitutional Court of Spain when it rules on the unconstitutionality appeal against Catalan Law 4/2010 of 17 March regarding popular consultations via referenda. However, in Ruling 31/2010 it made a statement which set a criterion which might anticipate its final decision: it considered that the exclusion of referenda from the powers of the Generalitat as detailed in Article 122 of the Statute of Autonomy should be extended not only to the authorisation authority of the State, but also "to the entire discipline of this institution, i.e. their establishment and regulation" (FJ 69).

associated with the consultation. As a result, all consultations of people based on the electoral roll and all consultations taking place based on electoral procedures would be considered referenda, resulting in the guarantees corresponding to this type of procedure[18].

There is, therefore, sufficient basis, supported by the jurisprudence of the Constitutional Court of Spain itself, that the Generalitat can regulate, based on the exclusive powers given by Article 122 of the Statute of Autonomy, non-referendum popular consultations as long as the persons consulted do not coincide with the electoral roll and that the procedure followed for the consultation is not the same as in an election with the guarantees of an election and as established in election law. This is what the Parliament of Catalonia understood when passing the Law on non-referendum popular consultations (in addition to the Law of the same Parliament of Catalonia on consultations via referendum) and the Council of Statutory Guarantees in its ruling on the matter. However, the Spanish Government understood that these consultations actually constituted a referendum which only it had the power to regulate and authorise.

It should be noted that, beyond the legal debate which we should not become too entrenched in and which is normally open, the Parliament of Catalonia, by passing this Law based on the Constitutional Court of Spain's own distinction between referenda and non-referendum popular consultations, behaved perfectly plausibly and reasonably, meaning that the qualification of this as contravening the Law or the Constitution is both unjustified and disproportionate. Naturally it is possible for there to be differences of criteria when interpreting the Constitution and the doctrine of the Constitutional Court of Spain itself, but when this interpretation is based on reasonable argument, the qualification as contravening the Law can only be explained as an attempted appropriation of the Constitution and its "true" meaning, excluding and negating the legitimacy of any other opinions. This exclusive and excluding tone, which attempts to reduce the Constitution to how those currently operating in the system understand it, can be seen clearly in the written appeal documents from the Spanish Government which are full of such expressions as "true" and "correct"

[18] Explicitly, Ruling 103/2008 concludes that: *"In order to consider a consultation as a referendum or more precisely, to determine whether a popular consultation is verified "via referendum" (art. 149.1.32 EC) their convocation thus requires an authorisation reserved for the State, and has to address the identity of the subject consulted, so that provided that this is the electoral body which is manifested through the various electoral procedures, with their concomitant guarantees, we would then be talking about a referendum-based consultation."* (FJ 2).

when describing readings of the Constitution and Constitutional Court by the Government, and expressions such as “contravene”, “under-handedness” and other similar negative terminology when referring to the Generalitat, which it accuses of having ulterior motives.

Finally, Ruling 31/2015 of 25 February of the Constitutional Court of Spain (in an extraordinarily short time frame – it is worth nothing that the normal average time to make a ruling on an appeal of unconstitutionality is between four and ten years) upheld the Spanish Government’s appeal. It considered that all of the consultations based on the electoral roll (albeit not being exactly the same) and which are decided based on the vote of citizens (even though it was not in accordance with current electoral procedures) must be considered a referendum and can therefore solely be regulated by the State[19] and authorised by the Spanish Government, no matter what the regional scope (Catalonia, municipal, intermunicipal) or purpose (whether or not it deals with Autonomous regional or local powers). In this way, it can be seen that the Constitutional Court decided to reinterpret, or specify in its own doctrine, a more restrictive reading of the Law which was interpreted much more freely by a huge majority in the Parliament of Catalonia (106 MPs, which corresponds to 78.5% of the total).

The second fundamental question covers the powers of the Generalitat to call a consultation such as the one regulated in Decree 129/2014. This Decree was annulled, as we have seen, by the Constitutional Court of Spain in Ruling 32/2015 of 25 February insofar as it was a type of consultation (which included the electoral roll, even though it was not exactly the same) which the Constitutional Court had declared unconstitutional in the Ruling passed down on the same day with regard to the Catalan Law on non-referendum popular consultations. The Ruling from the Constitutional Court of Spain, however, does not take into account the powers and other aspects regarding the Decree of calling a consultation, which may be interesting to investigate.

In effect, beyond the Generalitat’s overall power to regulate non-referendum popular consultations, the political and legal debate has also been centred on whether the

[19] Thereby also precipitating the outstanding resolution of another appeal on the grounds of unconstitutionality presented against the law regulating referenda in Catalonia – Catalan Law 4/2010 – which the Constitutional Court had already made clear its forthcoming decision in Ruling 31/2010 on the Statute of Autonomy of Catalonia.

Generalitat has the powers to call a consultation on the political future of Catalonia. This from two different points of view: firstly, if a consultation of this type can fall "within the remit of their powers" as required in Article 122 of the EAC for non-referendum popular consultations held by the Generalitat; and secondly, very closely linked, the effect the question on which public consultation is sought has for the State as a whole beyond just Catalonia.

Regarding the first point, the expression "remit of the powers of the Generalitat" can be understood in two different ways: in a strict sense as the overall powers the Statute of Autonomy attributes to the Generalitat for carrying out certain activities in different public areas such as health, education, commerce, culture and other topics as detailed in Chapter II, Title IV. In a broader sense, it could also cover the overall authorities the institutions of the Generalitat have, including those which are not based on actual authorities, but instead consist in initiatives, participation, political focus and other topics which go above and beyond the strict understanding of powers. Once more, and again going beyond the legal debate which could arise as a result of this interpretation, it is clear that the broader sense of the understanding of "powers" is quite reasonable and justified, and, as stated by the Council of Statutory Guarantees, entirely tenable[20]. It is therefore possible to understand that the consultation can be planned with respect to a drive or political initiative by the Generalitat such as an initiative for constitutional reform, which the Constitution itself recognises (Articles 87 and 166). This is what the consultation called in Decree 129/2014 was intended to do: to call the citizens of Catalonia (beyond just those registered to vote) to express their opinion (in a non-binding nature and without any direct effect) on a topic which is especially relevant to them and upon which the Generalitat would be empowered to exercise its right to request constitutional reform.

In these terms, it is also clear that a consultation in this form would neither alter nor interfere with the procedure for constitutional change as the Lawyer for the State argued in the appeal. It was merely an initial or preparatory political initiative which would be carried out by the institutions of the Generalitat and which is not regulated in the Law as obligatory before this type of initiative and of which the results are no means binding. As a result, it does not

[20] The Council of Statutory Guarantees expressed this decision (Ruling 19/2014, FJ second-4), after specifying that its previous declaration regarding the Law on consultations via referendum in the strictest reading of the concept of powers (Ruling 15/2010 of 6 July) was based on the fact that the powers in question were a result of a citizen rather than institutional request.

constitute either a modification or interference in the procedure for constitutional reform which, by the way, cannot be launched from a citizens' initiative and the results of which can only be a final approval, i.e. a binding referendum[21].

On the other hand, the second objection given with regard to the consultation and the Generalitat's power to call one and how it affects the entire population of Spain and not just the citizens of Catalonia in rendered invalid if it is taken into account that the consultation is planned as the result of a drive or political initiative by the Generalitat with no decision-making power and which is not legally binding (not even when exercising the right of initiative and, as a result, even less so for the material content of this political initiative) and has absolutely no direct effect. The result of the consultation can in no way be seen as affecting the entire Spanish population as it only takes place as the result of a right of initiative of the Generalitat and, if it decides so, in the same way to exercise the right even though no prior consultation is held. If the Generalitat can legally exercise this initiative, it is not clear why its powers to hold a preliminary step to find out the opinion of the citizens of the region are denied, especially considering the political importance the whole question raises.

In effect, the consultation is called and presented as an explicit preparatory act for the holding of a perfectly legitimate political initiative (which the Constitutional Court of Spain upheld in its ruling 42/2014 which noted that the Constitution did not impose any limits to its review and, as a result, all political proposals are legitimate as long as they respect the fundamental rights of the people and are implemented in accordance with legally allowed procedures). The consultation falls firmly within these guidelines.

In the Constitutional Court's Ruling on the Decree for calling the consultation, there was no direct reference to this question, however it did make an indirect reference in the Ruling on the same date on the Law on consultation. This latter ruling contains some general observations which could be applicable: on the one hand, it confirms that the Generalitat cannot formulate consultations which affect "fundamental questions resolved in the constituent process and which are abstracted from the decisions of other branches of government". Later on it goes on to affirm that in "clear" consequence thereof the opinion of

[21] In these terms, it becomes clear that the objection stated in Ruling 76/1994, with regard to a draft law promoted by a people's legislative initiative which called upon the Basque Parliament to start proceedings to change the Second Additional Provision of the Constitution, is not applicable.

"the citizens on such questions needs to be channelled through the procedures of constitutional reform". Further down in the same discussion of the legal basis, it calls for dialogue between the political powers in order to resolve their issues, and affirms that "the broad concept of dialogue does not exclude any legitimate system or institution which is capable of applying its initiatives to political decisions, nor any procedure which respects the constitutional framework". (FJ 6)

It is not clear exactly how these affirmations should be understood. The call for dialogue between the political forces and the express mention of the fact that there should be no exclusion of any "system or institution which is capable of bringing its initiatives regarding political decisions" can be understood as opening the doors to the possibility of consulting the citizens before starting legal and institutional initiatives which can be started by either party of the Autonomous Communities, but with the proviso (or contradicting directly) the first statement regarding the impossibility of holding consultations on questions which have already been "resolved in the constituent process and which are abstracted from the decisions of other branches of government". The circumscription of this impossibility regarding questions abstracted from "decisions" of other branches of government may prepare the groundwork for this interpretation as a popular consultation of this nature does not have a decision-making character and, furthermore, actually deals with the right to political initiatives which – and this is where there is doubt in constitutional jurisprudence – is perfectly legitimate.

As a general conclusion for this section, we would like to indicate that the appeals by the Government against the Law on non-referendum popular consultations and the Decree calling the consultation on 9 November 2014 attempt to impose an extremely restrictive interpretation on the concept of non-referendum popular consultations as opposed to that of a referendum and restrictions on the powers of the Generalitat to exercise political reform initiatives (which the Constitution itself expressly permits) with the aim of prohibiting the citizens of Catalonia from expressing their opinion directly on the political future of Catalonia (including the perfectly legitimate option of creating an independent state) before the Catalan institutions have the opportunity to complete the initiatives they see fit as detailed specifically in the test of the Decree calling the consultation and Resolution 5/X of 23 January 2013 of the Parliament of Catalonia. It is important to highlight the fact that the consultation called has under no circumstances been classed as a referendum on self-determination.

Far from containing hidden (and illegitimate) intentions which would need to be proven to categorically state that it contravenes the Constitution, the aim is clearly declared to be the holding of a non-binding non-referendum popular consultation without any direct legal effects in order to discover (with the sufficient guarantees but different to those established in electoral processes) the opinion of the citizens regarding the political future of Catalonia, including the option of creating a new independent state which could involve, where applicable, political initiatives by the Generalitat, which the Constitution itself affords the Generalitat.

The Constitutional Court, as we have seen, has taken the interpretation of the Spanish Government and annulled the section in the Catalan Law on non-referendum popular consultations as described in the section on general consultations in any regional scope in an extremely restrictive reinterpretation of its former jurisprudence. As a result, it also annulled the Decree calling the consultation on the political future of Catalonia. Despite that, the Constitutional Court of Spain calls for dialogue and indicates clearly that no legitimate system or institution "which applies its initiatives to political decisions nor any procedure which respects the constitutional framework" can be excluded.

5.3.3 Suspension of the non-referendum popular consultation and participation process

The suspension of the law and decree by the Constitutional Court on 29 September kicked off an intense debate between the parties supporting the consultation about which steps they should next take. Finally, the President of the Generalitat, after having met in several meetings with representatives of the parties, communicated to them[22] on 13 October that there was no way the consultation could be held which was compliant with the procedures and guarantees regulated by Law 10/2014 and Decree 129/2014 which would result in the clear declaration of the will of the citizens on the political future of Catalonia.

Nevertheless, this declaration was made after a long period of citizens' demonstrations, especially on Catalan National Day on 11 September 2014, in which the desire to vote in "9N" had become a rallying element and essential consequence.

[22] La Vanguardia, El Confidencial

In this context, against which we should note the lack of consensus between the parties supporting the right to decide to launch what would appear to be the best option of holding a plebiscite election, the President of the Generalitat made a statement to the press on 14 October in which he announced that the participation process would take place on 9 November and would be a "prior consultation", the results of which would need to be validated in a "definitive" consultation which could have to take place at a later date via elections to the Parliament centred on this question.

According to the declarations of the President of the Generalitat, the participation process would allow all of the citizens who so wished to express their opinion on the political future of Catalonia by responding to the question agreed on 12 December 2013 within "existing legal frameworks" which were not specified but under no circumstances would be those established with regard to referendums or non-referendum popular consultations. The aim was to organise a definitive alternative to the disallowed non-referendum popular consultation with ballot boxes and votes set to take place on 9 November in which the people would be expected to mobilise and participate.

6. The "9N" participation process of 9 November 2014

6.1 The main characteristics of the process

Despite the fact that the date, question and group of citizens called upon to vote in the participation process on 9 November 2014 coincided with those for the non-referendum popular consultation as called in Decree 129/2014, the participation process had a series of characteristics which made it differ considerably from any referendum or non-referendum popular consultation. The main differences were as follows:

a) The lack of any legal formalisation of the process

The participation process of 9 November was characterised by its lack of legal formalisation in both the application of the general legal framework and the lack of regulatory provisions or

administrative acts required to afford it a specific legal status, to hold it and to apply it. One of the contributing factors to the lack of formalisation of the process was the short time in which the unique, specific participation process had to be organised which would not coincide with any express legal provisions. This lack of formalisation made it very difficult for the State to lodge an appeal against the participation process.

The majority of the elements essential to the participation process were only formalised on the Generalitat de Catalunya web site (www.participa2014.cat) or in e-mails to the press which, in accordance with the terms set out in Article 82 of the Catalan Audiovisual Communications Act, were obliged to broadcast communications from the Government regarding the participation process.

b) The participation of the Generalitat, Town Councils and volunteers in its organisation and material implementation

Both the Town Councils and the Generalitat took part in the general organisation, the logistics, the final count of the results and announcement of the results. In fact, with the exception of just four Town Councils that decided not to participate, the remaining 943 helped with the organisation of the process so that it was possible to vote in all of the municipalities in Catalonia – including those which did not participate where an alternative was organised – and that there would be 1,250 places to vote and 6,400 polling stations.

Additionally there were a total of 40,000 individuals who voluntarily carried out the tasks involved in opening the polling stations, ensuring the vote was held in an orderly manner and in completing the initial count of the votes. These volunteers were given training so that the voting process and initial count would be carried out in an orderly and transparent fashion respecting democratic principles.

c) The lack of a register or voter list of those called to vote, the validity period and the guarantees

One of the procedural differences was the fact that, unlike in referendums and non-referendum popular consultations, the consultation did not have any kind of census or list of those eligible to vote; the list of voters was put together as people gave their details before going to put their voting papers in the ballot box. Furthermore, unlike referenda and non-referendum popular consultations which are held on one single day, the voting period in the participation process

ran from 9 – 25 November. Finally, with regards to the guarantees, there is a clear formal difference as the responsibilities in the case of referenda fall to the electoral commissions and in the case of non-referendum popular consultations to specific control and monitoring commissions. However, in this case these bodies did not participate and there was not sufficient time to create a General Participation Council for this process as originally had been envisaged. As a result, the "9N" participation process did not have a specific guarantee process on an institutional level and it was the volunteers themselves from the Government who were entrusted with monitoring the voting to ensure it was clean and transparent. Even though these guarantees were not institutionally present, we will see that they were fully compatible with the electoral process of transparency, fidelity and neutrality.

6.2 The appeal by the Spanish Government and the suspension by the Constitutional Court

However, before the start of voting (31 October 2014), the Spanish Government launched an appeal against the "9N" participation process with the Constitutional Court of Spain citing Article 161.2 of the Constitution. The Constitutional Court admitted the appeal, giving a provisional sentence on 4 November which, in accordance with Article 161.2 of the Constitution, entailed the immediate suspension of all actions involved in the preparation and holding of the participation process started by the Generalitat.

Before making a critical examination and evaluation of the arguments presented by the Lawyer for the State as the foundation for their appeal against the "9N" participation process, it is also worth taking some time to look at the contradictory statements made by the Spanish Government during the same period. At the start, the Government of Spain did not associate the participate process with a referendum, disregarding its importance at any level[23]. From this, it changed to launching an appeal with the Constitutional Court with the argument that, as we will see later, the participation process was, in fact, the same as a referendum. However, the day before "9N" was due to take place, the Spanish Prime Minister and the

[23] El País, Ara

Minister of Justice went on record with statements such as these: *"This isn't a referendum or a consultation or anything of the kind"* (declarations of Mr Rajoy in Cáceres reported by several newspapers, including *El País* on 9 November 2014; *"The [Spanish] Government is of the opinion that this is an act of political propaganda"* (Government press release read by the Minister of Justice and published on the Government's official web site). Looking at these declarations, it seems quite clear that the Government is contradicting its own beliefs by launching an appeal against the participation process on the grounds of unconstitutionality, as it itself believes that the process is anything but a referendum.

Moving on to the arguments used by the Government in its appeal, we can summarise that they are mainly based on the understanding that the participation process is actually a referendum which would violate certain constitutional precepts such as Articles 1, 2.1, 23, 81, 92, 168 and 149.1.32 of the Constitution. Broadly speaking, the Lawyer for the State's arguments are that the main elements in the participation process (fundamentally the overall group of participants called, the fact the question is the same as the one specified for the non-referendum popular consultation which had been suspended by the Constitutional Court and the fact it consisted of a process involving ballot boxes and votes) did in fact mean that the Generalitat was holding a referendum on self-determination. Based on these arguments, the Spanish Government believes that a referendum of these characteristics is not permissible within the constitutional framework as the Generalitat does not have the powers to call such referenda and, in this case, cannot provide the guarantees as required by such an instrument of citizen participation.

It should once again be noted how the Government is using the characteristics of the referendum as the reason for the appeal, but itself goes on to state how the participation process is, in fact, substantially different to a referendum. In these terms, a referendum is a mechanism of direct democracy which is used by the electorate to express its will in accordance with a procedure based on an electorate managed by the Administration and which takes place as the exercise of the universal right to vote and within a system of institutional and legal guarantees. On the other hand, the "9N" participation process is an activity organised by the Generalitat and implemented according to the powers and guiding principles of citizen participation in public issues which is limited to offering the people a specific way of expressing their opinions regarding the political future of Catalonia. As we have seen, the unique characteristics of the participation process when compared to a

referendum become clear when we look at the significant differences such as the greater numbers of possible participants, the lack of a prior register of voters, the decisive support from volunteers during the voting process, the lack of specific guarantees and the purely informative nature of the results.

It therefore seems unlikely that an act of participation which did not aim to establish the popular will on a subject but simply wished to give the citizens the chance to express their opinion on a possible future political configuration of Catalonia in the form of a very general poll could be as unconstitutional as argued by the Lawyer for the State. In this regard, if there are no signs of unconstitutionality in the “9N” participation process, an appeal based on Article 161.2 of the Constitution is not applicable as this procedure is constitutionally reserved for constitutional violations derived from rulings passed by Autonomous Communities. With this in mind, it could be quite believable that the only motive for which the Government used the procedure related to Article 161.2 of the Constitution was to ensure that the Constitutional Court suspended the “9N” participation process. In fact, the Spanish Government has made inappropriate use of Article 161.2 of the Constitution as, because there were no signs of unconstitutionality in the “9N” participation process, the usual legal paths should have been followed. These usual legal paths would, however, not have resulted in the automatic suspension of the participation process.

Finally, we should mention in this section that the provisional sentence of 4 November 2014 with which the Constitutional Court of Spain suspended all of the activities related to the “9N” participation process, the High Court limited itself to this ruling and did not rule on the request of the Lawyer for the State to address a specific mandate to the President of the Generalitat in this matter. This is relevant, as we will see shortly, when looking at the lawsuit filed by the Attorney General against the President of the Generalitat for not having respected the suspension of the “9N” participation process as ruled by the Constitutional Court.

6.3 Peaceful, civic and democratic participation

Despite the suspension from the Constitutional Court, the Generalitat decided to go ahead with the “9N” participation process according to the aforementioned characteristics. The

argument given by the Catalan Government to continue with the process was simple but coherent: the suspension by the Constitutional Court as a result of the appeal by the Spanish Government within the framework of Article 161.2 of the Constitution was made regarding an issue (a referendum) which the Generalitat did not have the intention to organise (the Catalan Government organised a participation process with characteristics totally different to those of a referendum); as a result the prohibition was not applicable as it referred to a form of participation (referendum or non-referendum popular consultation) which the Generalitat accepted would not be possible. This response from the political parties (CiU, ERC, ICV-EUiA, CUP), the two bodies most directly involved in mobilisations for the process on 9 November (Òmnium Cultural and the Assemblea Nacional Catalana) and all of the social organisations belonging to the National Pact for the Right to Decide involved in the "9N" process since December 2013 was overwhelming support.

In practice, the "9N" participation process took place perfectly normally: peacefully and in a civic and democratic manner, i.e. as had been expected beforehand from an organisational and practical point of view. This means that the hard work by the 40,000 volunteers to implement the process was decisive in ensuring it was a success and guaranteeing the efficiency and transparency of all activities taking place at the polling stations.

A series of cyberattacks, which we referred to at the beginning of this document, affected Government systems such as the electronic prescription service, shared medical history pages and certain Generalitat web portals and the Press page. These were, however, the exception in an otherwise peaceful day and did not affect the IT operations required for an effective roll-out of the participation process (as it was possible to implement extraordinary measures in order to fight off these attacks).

Several individuals also lodged complaints with Tribunals to stop the process, although these were not successful either. In this regard, it should be mentioned that during "9N" there was no action from the Spanish Government or the Attorney General which aimed to directly stop the participation process.

This peaceful nature of the participation process without major incidents was highlighted by the President of the Generalitat when he announced the preliminary results on the evening of 9 November.

6.4. Assessment by Spanish and international observers

The “9N” participation process sparked great interest on the international stage. Proof of this was the attendance of a multi-party delegation of members of the European Parliament as observers of the participation process and around 125 different press outlets from around the world.

The delegation of international observers, at the request of the Catalan Government and with the support of the Public Diplomacy Council of Catalonia (DIPLOCAT), attended different centres of participation where they could observe first-hand how the voting process was going and also the press and data centre where all of the Spanish and international press were accredited.

Based on this, the observers released a declaration stating that the process had been totally peaceful and had been implemented without any undue influence. It went on to produce a list of the main strengths and weaknesses of the process:

Strengths

- The delegation did not observe any coercion, intimidation or attempts to influence the participants.
- The huge turnout across the whole of Catalonia, despite the exceptional circumstances the process was held under.
- The process was carried out in a positive and friendly manner.
- The process was carried out in an efficient manner thanks to the large number of volunteers.
- The process had the right number of ballot boxes available.
- The process for identifying citizens who wished to vote was carried out rigorously using official documents to identify them. People without identification could not vote (although they were able to vote on the following days). The personal data on each participant was recorded on papers and then confirmed via a computer-based database before voting.

- The computers used in the polling stations were not connected to the internet which meant that they were more secure and less open to attack or interference.
- The programme used to verify documents was of a high quality and the delegation of observers noted that it did not allow invalid votes.
- The participation of citizens aged between 16 – 18 was a success.

Weaknesses

- As there was no list of registered voters available, there were some issues when managing the votes.
- The unusual conditions under which the process was held meant that there was a reduced number of polling stations when compared to a normal election which caused problems and possible confusion among the electorate.
- The lack of an official person at the polling stations meant that it was more difficult to manage complaints or issues as they arose in real time.
- Despite the fact that the honesty of the volunteers was never questioned, the way in which they were selected and assigned responsibilities was less satisfactory than they would have been if these tasks had been carried out by officials in charge of voting.
- The secrecy of the voting was not guaranteed to the same extent across the different polling stations.

With regard to the media, a total of 865 professionals belonging to 250 different outlets, half of which were from outside Spain, received accreditation between 7 – 10 November. Among the press present were the main world new agencies, leading global newspapers and important international television channels. Of particular note was the large number of European press agencies (particularly Portuguese, British, Swiss, French and Russian). For the first time there was also a significant interest from Asian news outlets, particularly from China and Japan. Overall the international reporting regarding “9N” was very positive; the different media gave over plenty of time to explaining the process and highlighted the civility and normality with which the voting took place despite the hostility from the Spanish state. Numbers were considered as being a great success and much higher than expected.

The Catalan Association of Political Scientists and Sociologists also sent out a team of observers to follow the "9N" participation process, writing a report at its conclusion. Of the conclusions drawn in this report, we would particularly like to highlight the following points:

a) The overall honest attitude of the organisers.

b) The lack of connection between the computers was a weakness.

c) The willingness of the volunteers to provide a good service and act in a diligent fashion.

d) The excessive effort it took for some people to vote was a weakness: some people did not have the opportunity to vote, although this was the exception.

e) The vote was sufficiently free, universal and equal. With regards to the secrecy of voting, some places were worse than ideal whereas others were better.

f) The preventive guarantees (volunteers, transparency, presence of international observers, journalists and experts) were excellent. The lack of institutional guarantees were a weakness and an important risk, albeit without noticeable effects.

g) A greater number of polling stations would have been more appropriate.

h) With regard to the results, the Association highlighted the relevance of the answer YES to the first question and, without ignoring the significance of the number of YES–YES votes, noted that the political context may mean that the support for the YES–NO option may actually be higher than shown in the results.

6.5. The lawsuit against the President of the Generalitat, the Vice President of the Catalan Government and the Minister for Education filed by the Spanish Attorney General

The response of the State to the participation process was a criminal lawsuit against the President of the Generalitat, the Vice President of the Catalan Government and the Minister for Education.

After fierce controversy between the Regional Attorneys in Catalonia and the Spanish Attorney General[24], the latter decided to file a lawsuit against the President of the Generalitat, the Vice President of the Catalan Government and the Minister for Education on 21 November 2014 as a result of their alleged criminal liability for the "9N" participation process. Specifically the lawsuit accused the President and two other members of the Generalitat of the crimes of insubordination, usurpation of authority, prevarication and misappropriation of public funds. These crimes under some circumstances can result in light prison sentences, however they imply severe penalties of disqualification and suspension of public office.

The Catalan High Court of Justice, in a move which can be considered completely habitual in such procedures, admitted the lawsuit on 22 December 2014 filed by the Spanish Attorney General and indicated that the investigations involved in the case would be based on the crime of insubordination and that the other crimes involved in the lawsuit would be investigated in relation to this.

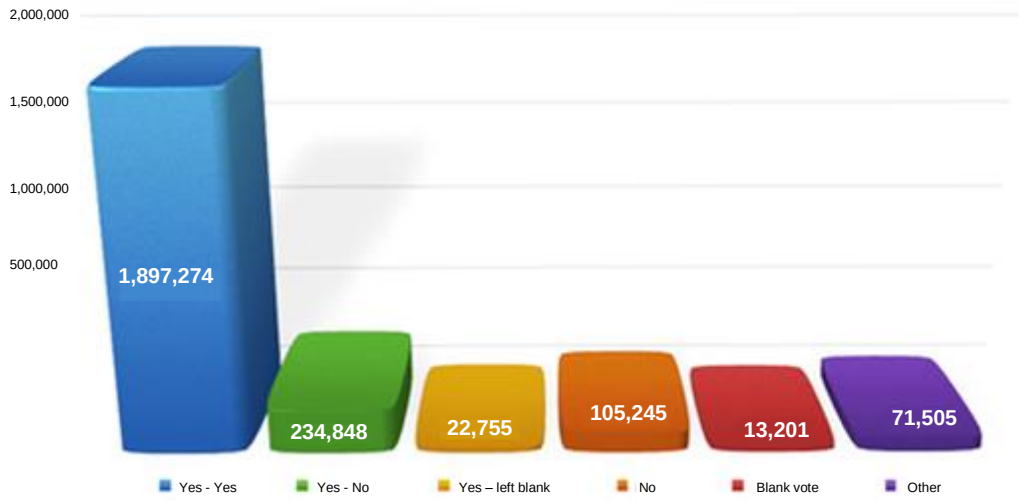
The fact that the legal investigation is concentrates on the accusation of insubordination, it is likely that the lawsuit will ultimately be rejected as, according to the jurisprudence of the Supreme Court (see Ruling 54/2008 for all accusations) requires that, for a crime to have been committed, a specific, personalised legal resolution must have been passed in which those involved are specifically instructed to do or not do a specific action, and that the person must have ignored this willingly in order to not comply with it or to break it.

However, the provisional ruling of the Constitutional Court on 4 November 2014 in which the appeal from the Spanish Government is accepted and, as a result, all acts regarding the consultation are suspended, contains a prohibition which is completely vague, particularly given the complexity of the acts involved in a procedure which is as novel as the participation process started. The Constitutional Court's ruling did not comply with the express request of the Lawyer for the State in the sense that it required the President of the Generalitat complied expressly with the suspension of the "9N" participation process. Furthermore, it should be noted that the Generalitat required an explanation from the Constitutional Court which acts were suspended, proof that there was no clear willingness to ignore and not comply with the ruling. As a result, in this case there seems to be no proof of an act of insubordination from the three people in the lawsuit.

[24] ABC, Europa Press, La Vanguardia.

6.6. The results of the participation process and the renewed offer for dialogue

Result of the participation process held on 9 November 2014



Source: http://www.participa2014.cat/

2,344,828 people took part in the process. Of those, 1,897,274 (80.91%) voted YES–YES, i.e. voted for Catalonia to become and independent state. In the case of the other options, the YES–NO vote (i.e. that Catalonia should become a state, but not an independent one) achieved 234,848 (10.02%) of the votes, YES–BLANK 22,755 votes (0.97%), NO 105,245 votes (4.49%), BLANK VOTES 13,201 (0.56%) and other options 71,505 votes (3.05%). *Taking into account that the total electorate is around six million, it is clear that more than a third of the citizens of Catalonia took part in the participation process, and that the option for Catalonia to become an independent state achieved a clear majority.* However, as we have seen previously and as stated by the parties supporting the participation process, these results (even though they are clearly politically significant) are nothing more than the results of a preliminary consultation which would need to be "validated" in a definitive consultation which can only legally take place via elections to the Parliament of Catalonia in which this is the only or fundamental point of debate.

In all events, on 11 November 2014, the President of the Generalitat wrote another letter to the Spanish Prime Minister in which he reaffirmed his willingness to enter into dialogue with the Spanish Government to agree upon the terms for a definitive, binding consultation. The response, once again, was negative. Faced with this blockage, the President of the Generalitat de Catalunya, Artur Mas, in agreement with the other political parties supporting the right to decide, announced early elections to take place on 27 September which will have this question as the central point.

This report on *The process for holding the Consultation regarding the political future of Catalonia: an evaluation* was written by the Advisory Council on the National Transition, the members of which are:

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