



## PARLAMENT DE CATALUNYA

### **Resolution 479/X of the Parliament of Catalonia by which it was agreed to submit to the Presiding Board of Congress the draft organic act delegating to the Generalitat of Catalonia power to authorize, call and hold a referendum on the political future of Catalonia**

Proceeding 270-00009/10

#### Plenary Assembly

At its sitting held on 16 January 2014, the Plenary Assembly of the Parliament of Catalonia agreed to process directly and in a single reading the proposal to submit to the Presiding Board of Congress the draft organic act delegating to the Generalitat of Catalonia power to authorize, call and hold a referendum on the political future of Catalonia.

Finally, in accordance with Article 154.1 and related articles of the Parliament's Rules of Procedure, Article 87.2 of the Spanish Constitution and Article 61.b of the Statute of Autonomy of Catalonia, the following resolution was adopted:

RESOLUTION 479/X OF THE PARLIAMENT OF CATALONIA BY WHICH IT WAS AGREED TO SUBMIT TO THE PRESIDING BOARD OF CONGRESS THE DRAFT ORGANIC ACT DELEGATING TO THE GENERALITAT OF CATALONIA POWER TO AUTHORIZE, CALL AND HOLD A REFERENDUM ON THE POLITICAL FUTURE OF CATALONIA

#### PREAMBLE

I. Throughout their history, the people of Catalonia have expressed the will to govern themselves, with the goal of promoting the progress, welfare and equal opportunities of citizens and strengthening their own culture and collective identity.

This will has been expressed in the current democratic period in accordance with the constitutional and statutory framework, permitting the recovery of self-government institutions and a large area of political and administrative autonomy.

In recent years the majority of Catalan political and social forces have promoted measures of profound transformation of the political and legal framework of Catalonia, the most important of which was the reform of the Statute of Autonomy of Catalonia passed by the Parliament of Catalonia in 2005. However, this process was unsuccessful because of the difficulties created by institutions of the Spanish State and, in particular, because of Sentence 31/2010 of the



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Spanish Constitutional Court, which barred the way to the evolution of the political and legal framework of Catalonia under the terms established by the 2006 Statute, approved by the *Cortes Generales* (Spanish Parliament) and by the people of Catalonia in a referendum.

Mass demonstrations on 10 July 2010, 11 September 2012 and 11 September 2013 were a clear expression of Catalonia's rejection of the disregard for the decisions of its institutions and its citizens, and opened a new dimension of national aspirations.

On 27 September 2012 the Parliament of Catalonia, through Resolution 742/IX, expressed the need for the people of Catalonia to be able to determine their collective future freely and democratically through a consultation. The last elections to the Parliament of Catalonia, held on 25 November 2012, confirmed this will clearly and unequivocally by configuring a parliamentary majority in favour of the exercise of the right to decide composed of parties that included the holding of a consultation as a priority objective in their election programmes.

Furthermore, on 13 March 2013 the Parliament of Catalonia approved Resolution 17/X on the start of a dialogue with the Government of the Spanish State with a view to enabling a consultation on the future of Catalonia.

II. The democratic principle is enshrined in the Spanish Constitution and in the Statute of Autonomy of Catalonia as one of the core values of the legal and political framework. This democratic principle is essentially articulated by representative democracy, but also through direct political participation of citizens in public affairs, in accordance with Article 23.1 of the Spanish Constitution and Article 29.1 of the Statute of Autonomy of Catalonia. A basic instrument of this direct participation is the referendum, which allows citizens to express their opinion on political decisions of special importance through the exercise of voting rights and an electoral process and guarantees.

In recent years a clear and unambiguous will to hold a consultation on the political future of Catalonia has emerged among the citizens, the mainstream political forces and the institutions of the Generalitat.

The holding of a consultation must be considered a normal scenario that is fully comparable with that of countries with a democratic tradition and nature, such as Canada and Great Britain which, faced with demands made by a national community linked to a territory that is clearly delimited politically and administratively (Quebec and Scotland, respectively), consider that the best form of expression of this collective will is a referendum. The Council of Europe also considers that the referendum is the most appropriate and democratic mechanism for determining the will of the people in matters of this nature.

On this point one must recall Catalonia's status as a nationality under Article 2 of the Spanish Constitution and Article 1 of the Statute of Autonomy of Catalonia, as a nation according to the preamble of the Statute, and as a people according to the preamble of the Constitution.



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Finally, it must be remembered that Article 2.4 of the Statute of Autonomy of Catalonia provides that "the powers of the Generalitat emanate from the people of Catalonia."

III. 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.

Furthermore, the expression of the right to decide through a consultative referendum cannot be considered in itself incompatible with the constitutional and legal framework. The 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.

IV. Article 149.1.32 of the Spanish Constitution gives the Spanish State sole powers for authorizing the calling of referendums. These powers are laid down in Organic Act 2/1980, of 18 January, regulating different kinds of referendums, which further develops the provisions of said article.

However, Article 150.2 of the Spanish Constitution allows the Spanish State to devolve or delegate to the autonomous communities, through an organic act, powers relating to state areas that by their nature can be devolved or delegated.

The authorization to call referendums is technically established as a power of the Spanish State, in accordance with Article 149.1.32 of the Constitution and, therefore, as a power that can be devolved or delegated on the basis of Article 150.2 of the Constitution. In addition, a consultative referendum in a territorial area corresponding to an autonomous community is not a case in which the nature of the subject makes Article 150.2 of the Constitution inapplicable. This conclusion is reinforced by the margin of political appreciation allowed by this provision and may also depend on the form, scope and conditions under which the exercise of power is devolved by the Spanish State.

In this case the organic act also fulfils the requirement of regulatory status established by constitutional jurisprudence regarding referendums, allowing a referendum to be recognized at the level of an autonomous community.

The powers of the Spanish State regarding referendums, resulting from the connection between Articles 23, 81, 92.3 and 149.1.32 of the Spanish Constitution referred to in Legal Basis 69 of Sentence 31/2010 of the Spanish Constitutional Court, allow the organic legislator of the Spanish State, as stated above, to establish and regulate types of referendum other than those established by the Spanish Constitution, including one at the level of an autonomous community.



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V. Experience in other democratic countries in which similar processes to the Catalan one have been, or are being, considered highlights their complexity, especially with regard to the requirements of the democratic principle and the principle of legality.

The political system of the Spanish State is based on the democratic principle. At a time when there is an unambiguous majority demand by society and institutions, and the political subject of reference for this demand is a people who have the undeniable status of a national community, the democratic principle should allow the will of the people of Catalonia to be expressed. This will regarding the collective political future must be expressed in order to determine its true scope, and this must be done with a referendum that raises this question clearly and precisely.

All of this should be done on the understanding that, as a result of a favourable outcome of the referendum, by requirement of the same democratic principle, the will expressed at the polls must lead to a certain political conduct of the Spanish State and of the Generalitat of Catalonia, namely a fair and timely negotiation of the process to be followed in order to convert this will into a legal reality.

For this reason, for this act 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 for a commitment to take action on the result of the referendum.

VI. The initiative fostered by this act is based on the realization that recently, and especially after the sentence on the Statute of Autonomy of Catalonia, the political and social situation in Catalonia has undergone substantial changes related to the transformation of the current legal and political framework.

Such an obvious demand must have a legal form of expression in a State that accepts democracy as one of its core values and is a member of the European Union, for which the democratic principle is also a foundational value.

The Parliament of Catalonia has on several occasions expressed the will for the right to decide to be made effective by consulting the citizens of Catalonia on their collective political future. The President and the Government of the Generalitat of Catalonia have also expressed this will clearly and have asked the Spanish State to take the necessary measures to ensure that this consultation is legally possible.

Because so far there has been no political response to this demand, the present initiative, exercised on the basis of Article 87.2 of the Spanish Constitution and Article 61.b of the Statute of Autonomy of Catalonia, seeks to allow the consultation to be carried out through a referendum, as the most suitable form of consultation for this case. Furthermore, the procedure of the referendum should allow it to be held in accordance with the parameters that the processes most



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similar to that of Catalonia are consolidating as appropriate and as internationally accepted praxis.

Through this initiative, the Parliament of Catalonia wishes to foster the application of a constitutional and legitimate path for holding the referendum demanded by the vast majority of the citizens of Catalonia and it does so in the way that it sees most appropriate and taking into account all interests that are affected by a process of this nature.

SINGLE ARTICLE. DELEGATION TO THE GENERALITAT OF CATALONIA OF THE POWER TO AUTHORIZE, CALL AND HOLD A REFERENDUM ON THE POLITICAL FUTURE OF CATALONIA

1. The power to authorize, 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 and in the conditions set out in Paragraphs 2, 3 and 4.
2. The referendum must be called and held before the end of 2014, and cannot coincide with election periods or with a date of great political or symbolic importance.
3. The referendum must be called by the Government of the Generalitat of Catalonia.
4. The procedure for holding the referendum and its guarantees are those determined by the legislation on referenda and electoral processes and, if applicable, by the decree of the Government of the Generalitat of Catalonia calling the referendum.

Palace of Parliament, 16 January 2014

Third secretary

President of the Parliament

Josep Rull i Andreu

Núria de Gispert i Català