Constitutional Court Judgment No. 31/2010, of June 28 (Unofficial translation)

The Constitutional Court, in full bench, composed of the Honour Judges Ms. Maria Emilia Casas Baamonde, as President, Mr. Guillermo Jiménez Sánchez, Mr. Vicente Conde Martin de Hijas, Mr. Javier Delgado Barrio, Ms. Elisa Pérez Vera, Mr. Eugeni Gay Montalvo, Mr. Jorge Rodriguez Zapata Pérez, Mr. Ramón Rodriguez Arribas, Mr. Pascual Sala Sánchez and Mr. Manuel Aragón Reyes, has pronounced

IN THE NAME OF THE KING

the following

JUDGMENT

In the action of unconstitutionality n° 8045-2006 brought by ninety -nine Members of the People's Party Parliamentary Group in the Congress against a range of provisions of the Statute of Autonomy for Catalonia as amended by the Organic Law 6/2006 dated July 19th, 2006 (hereinafter "the Statute"). The State Solicitor, the Government and the Parliament of Catalonia have been parties to the proceedings. The Judgment has been drawn up by Her Honour the President, Judge Maria Emilia Casas Baamonde and expresses the opinion of the Court.

II Grounds

1. The action of unconstitutionality to be resolved in these proceedings is the first in which the reform of a Statute of Autonomy is challenged in extenso, thus posing questions of the greatest relevance and significance for the definition of the constitutional model for the territorial distribution of the public powers. The extension and detail of the arguments submitted by the parties in defense of their respective positions has made it necessary to abandon the structure traditionally observed in the presentation of the background to our resolutions and to organize the different arguments into the two main sections in which the writ of complaint is divided, with the first focusing on the general considerations inspiring the challenge underlying the petition as a whole and the second applied to the specific challenge to the numerous provisions of the Statute herein appealed.

The exhaustiveness with which the facts have set out the positions of the parties will redeem us from having to go over at each step the reasons set out by each one in connection with the judgement of constitutionality of the provisions questioned, as it will be sufficient to indicate the facts summing up the respective positions about which we are to give judgement. In any case, and for the appropriate delimitation of the object of these proceedings, we must set down here that the reasons put forward by the parties in connection with the general considerations made by the petitioning Deputies in their writ challenging the text circumscribe the true core of the issue debated in the definition of the function and content inherent to Statutes of Autonomy; their position, in short, within the system of sources of law established by the Constitution and, in particular, their relationship with the Fundamental Law and other rules of the Legal System.

The Petitioners, whose arguments on this particular have been reflected in Fact 11, defend a restrictive interpretation of the so-called Statutory Reserve established in Article 147.2 of the Spanish Constitution ("Constitución Española" in Spanish: CE), in the idea that it is a relative reserve a) as it is de minimis, even though it allows a certain material extension due to connections; b) as it does not exclude its satisfaction through basic regulations open to the provisions of a lower rank adopted by the Autonomous Communities; and c) as it refers to regulatory functions that are on occasions shared with State level laws. In addition, it would be a matter of a reserve referring to an inherent constitutional function of Statutes of Autonomy, to the point where these could not carry out the function assigned to other rules, whether they are

laws (organic or ordinary laws) or executive regulations, in the latter case because of the risk of petrification that it implies.

In the opinion of the petitioners, the amendment to the Statute of Autonomy of Catalonia would have stepped many times over the mark of that statutory reserve, as it happens with the regulation of individual rights or the discipline of relations between the Autonomous Community and the State, and with the European Union and international institutions, both areas in which the Statute would be attempting to exercise typically constitutional regulatory functions. Nor would there be any shortage of circumstances in which the Statute incorporates regulations constitutionally reserved expressly for other rules of the State, as would be the case of those provisions of the Statute that include mandates for the State legislator aimed at preserving the powers of the Autonomous Communities to the detriment of basic legislation or, also, with those that replace, by anticipation or binding remission, the freedom of Parliament to make provisions. Finally, the Statute challenged would abound in merely interpretative rules, explicitly discredited by this Court since its STC 76/1983 dated August 5th, 1983. For the petitioners, the constitutional impact of all these excesses is summed up in the censure made that the Statute of Autonomy of Catalonia attributes to itself the competence to decide on powers, thus usurping, by means of the exercise of a primary and therefore sovereign function, the purposes and functions assigned by the Constitution to the laws of the State and to the Courts.

The State Solicitor does not share the opinions of the petitioners and defends, in the arguments submitted (summarized in Fact 12), after insisting on the hierarchical subordination of the Statutes to the Constitution, a broader interpretation of the content materially accessible to the Statutes, highlighting the numerous explicit remissions made by the Constitution to the Statutes apart from that in the aforementioned Article 147.2 CE and noting that their status as basic institutional rule qualifies them for a content that exceeds the minimum represented by that provision. For the Government's representative, the issue of the constitutionally possible content of Statutes of Autonomy is linked to their special rigidity, which would only be reached by those parts respecting the limits of Article 147.2 CE and the other express constitutional remissions, as well as those offering a reasonable connection with the same, so that the possible excess would not derive into a declaration of nullity, but only in the recognition of the passive force inherent to organic laws or to ordinary legislation, as appropriate. For the State Solicitor, this technique would perhaps allow the difficulties posed in the appeal to be overcome in connection with the non-interchangeability of the Statute with other laws and would avoid the declaration of nullity on the grounds of unconstitutionality for the benefit of an acceptable interpretation capable of giving consistency to the constitutionality block in this terrain. On the other points, the State Solicitor denies that the Statute has invaded any regulatory reserve that simply does not exist. Nor does he share the idea that the Statute is usurping the functions reserved for other rules, an objection that, in his view, suffers from abstraction and can only be discussed by specifically examining each of the provisions appealed. Furthermore, he considers gratuitous the allegation that the Statute could have assumed the competence to decide on powers since such competence, as an act of sovereignty, corresponds solely and exclusively to the Constitution and what is to be judged here is not a constitutional reform, but an amendment to a Statute within the framework of the Constitution.

For its part, the Catalan Government maintains, in the allegations summarized in Fact 13, that the reform appealed stems from an extensive conception of the Statute as a "basic institutional rule" incorporating the regulation of all the structural elements contributing to the purposes of the Statute of Autonomy, the specificity of which would render inappropriate the transfer to this terrain of the legal commentaries established in connection with the contents of the Organic laws or of budgetary laws, whose material content is previously and restrictively limited. In its capacity as a basic institutional rule included within the constitutionality block on account of its "para-constitutional" or "sub-constitutional" nature and as the leading rule heading up a distinct

legal system of the Autonomous Community, the determining criterion for the definition of its possible content should be that of its connection with the functions constitutionally corresponding to it, which would be translated into the possibility of including forecasts on the relationship of the institutions of the Autonomous Community with its citizens as embodied in the recognition of rights and with the powers of other Autonomous Communities, the State or the European Union.

Finally, the Parliament of Catalonia also defends an extensive conception of the Statute's reserve, as inferred from the brief containing its allegations, reported in Fact 14, where it is argued that, in view of its triple condition as a rule creating an Autonomous Community, the basic institutional rule for the same and a rule approved by the State, the Statute cannot be limited in its content to the elements expressly envisaged in Article 147.2 CE, nor can it be said that it unilaterally imposes mandates on the State legislator, as it is the State itself that approves it as an Organic Law. Its specific constitutional function and its unique approval procedure make it an agreed rule, turning the Statute into a unique normative category within the system of sources of law, without any other parameter for validity than the Constitution itself and with a material scope that must correspond with the role falling to it as the leading rule heading up a regional legal system. Nor does the Parliament accept that there is any stain of unconstitutionality associated with the inclusion in the Statute of Autonomy of matters reserved for other organic laws or the high degree of detail and precision observed in the regulation of certain matters.

3. Statutes of Autonomy are rules subordinated to the Constitution, as it corresponds to normative provisions that are not an expression of a sovereign power, but of a devolved autonomy based on the Constitution, and guaranteed by it, for the exercise of legislative powers within the framework of the Constitution itself (thus from the outset, the Judgment of the Constitutional Court STC 4/1981 dated February 2nd, 1981, in its Ground ("fundamento jurídico" in Spanish; FJ) 3. As the supreme rule of the Legal System, the Constitution admits no equal or superior, only rules that are hierarchically subjected to it in all regards. There is certainly no lack of legal rules in the System that, over and above the Constitution sensu stricto, fulfill in the regulatory system functions that can be classified as materially constitutional as they serve the purposes conceptually seen as inherent to the first rule of any system of Laws, such as, in particular, to constitute the foundation of the validity of the legal rules included within the primary levels of the Legal System; i.e., those in which the higher organs of the State operate. Nonetheless, this classification has no greater scope than the world of pure academia or legal commentary and, however convenient it may be for the illustration of the terms in which the regulatory system based on the Constitution establishes and develops the foundation of its existence, it can in no case be translated into a normative value in addition to what corresponds strictly to all the rules located outside the formal Constitution. In short, it in no way affects the subordination to the Constitution of all the rules that, whatever their purpose with a material or logical perspective, are not included within the Legal System under the guise of the formal Constitution; the only one that attributes to regulatory contents, including those that materially might be classified as outside the academic concept of the Constitution, the position of supremacy reserved to the Organic law of our Legal System.

The Statutes of Autonomy are included within the System in the form of a specific type of State law: the Organic Law, a legal form reserved for their approval and amendment under Article 81 and Article 147.3 of the Spanish Constitution. Their position in the system of sources of law is therefore characteristic of organic laws, namely that of the legal rules related to other rules in accordance with two criteria: hierarchical and competence-related. Insofar as they are legal rules, the principle of hierarchy structures its relationship with the Constitution in terms of absolute subordination. Insofar as they are legal rules for the reserved regulation of certain matters, the competence-related principle determines their relationship with other legal rules,

whose constitutional validity is made to depend on their respect for the scope reserved to organic laws, in such a way that the competence-related criterion becomes a prerequisite for the action of the principle of hierarchy, as any failure to observe the first results indirectly in an invalidity caused by the breach of the superior rule shared by both organic laws and the ordinary legal rule, in other words, by contravening the Constitution.

Organic laws, in short, are hierarchically inferior to the Constitution and superior to the infra-legal rules handed down within the scope of its own competences; and this constitutes grounds for invalidity under the Constitution with respect to those rules that, ignoring the reserve of organic laws, indirectly infringe the distribution of competences ordered from the hierarchically supreme rule.

The reserve of organic laws is not always, however, a reserve in favor of genus, but on occasions may be particularized in one of its species. This happens, for instance, with the Judiciary Organic Law (Article 122.1 CE) and, precisely, with each of the organic laws approving the various Statutes of Autonomy. In these cases, organic laws are not a fungible form but rather, in connection with the specific matters reserved for a particular Organic Law, the other organic laws are also related in accordance with the principle of distribution of competences. In this state of affairs, the relative position of the Statutes of Autonomy with respect to other organic laws is a question that depends on the constitutionally necessary content and, where appropriate, any possible content of the former.

4. The Constitution does not determine expressly the possible contents of a Statute of Autonomy. It only explicitly prescribes what its necessary contents must be, comprising the minimum referred to in its Article 147.2 (name, territory, institutional organization and powers) and the provisions arising out of specific constitutional mandates such as, among others, that requiring the Statute to abide by the discipline of the regime for designating Senators appointed by the Autonomous Communities (Article 69.5 CE). These necessary contents may also be sufficient, but the Constitution itself expressly allows the Statutes of Autonomy to include other contents. Thus, Article 3.2 CE foresees that the Statutes of Autonomy will be the rules dictating any potential co-official status for the Spanish languages; and Article 4.2 CE empowers them to recognize their own flags and symbols.

Therefore, there is a constitutionally compulsory content (Article 147.2 CE) and a constitutionally possible content in the light of express constitutional provisions (i.e., Articles 3.2 and 4.2 CE). Judgment STC 247/2007 dated December 12th, 2007, resolved the issue of whether either of these contents exhausted all constitutionally legitimate content; in other words, whether or not the Statutes of Autonomy can also have additional contents that, without stemming from an express constitutional mandate or an equally explicit authorization from the constituting body, could find an implicit foundation in the function and quality attributed by the Constitution to this legal rule. We have said, in effect, that under Ground 12 of that resolution "the constitutionally legitimate content of Statutes of Autonomy includes both what the Constitution expressly envisages (comprising, in turn, the minimum or necessary content envisaged in Article 147.2 CE plus the additional content referred to in the remaining express references to the Statutes contained in the Constitution), such as the content that, albeit not expressly indicated by the Constitution, is an adequate complement to the same through its connection with the aforesaid constitutional provisions, an adequacy that must be understood to refer to the function entrusted, sensu stricto to the Statutes of Autonomy by the Constitution, insofar as these are the basic institutional rule to carry out the functional, institutional and competence based regulation of each Autonomous Community."

The foregoing is a consequence of a series of initial considerations on the constitutional nature and function of Statutes of Autonomy. In this sense, it is compulsory to start from the obvious notion that the Spanish Legal System stems from its roots in the Constitution. From here and within its framework, the Statutes of Autonomy imbue the Legal System with a diversity

permitted under the Constitution and seen at the legislative level, with the devolution to the Autonomous Communities their undeniable inherent nature as political entities (STC 32/1981 dated July 28th, 1981, FJ 3, as representative of all the Judgments). The first constitutional function of the Statutes of Autonomy lies therefore in the diversification of the Legal System through the creation of devolved regulatory systems, all hierarchically subordinated to the Constitution and organized among them in accordance with the criterion of competence. With respect to these devolved regulatory systems, the Statute of Autonomy is the basic institutional rule (Article 147.1 CE). And, together with the rules specifically issued to define the respective powers of the State and the Autonomous Communities (Article 28.1 of the Organic Law of the Constitutional Court), it is also the rule guaranteeing that the devolved system remains undamaged, as the Statute is the condition giving constitutionality to all of the rules in the Legal System as a whole, as well as those sharing its form and rank. This condition, however, is only attained through remission from the only rule that, in actual fact, determines the constitutionality of any rule, namely, of course, the Constitution itself. Nullity due to an infringement of a Statute of Autonomy is, in actual fact, a breach of the Constitution, the only rule capable of attributing (in its own right or by remission to the provisions of another rule) the necessary power to produce valid rules.

In addition, a Statute of Autonomy endows with the inherent powers on the Autonomous Community it establishes and for which it is the basic institutional rule. Thus, it has the function to attribute powers that define, on the one hand, an internal remit for the regulation and exercise of public powers by the Autonomous Community (this can potentially be extended to the powers under Article 150 CE, which will therefore not be inherent to it), and help to outline, on the other hand, the scope of regulation and powers inherent to the State. This latter scope insofar as the powers of the State depend indirectly for their content and scope on the existence and extension of the powers assumed by the Autonomous Communities in the extraordinarily flexible framework represented by the lower limit or minimum defined in Article 148 CE and the upper limit or maximum given, a contrario, by Article 149 CE. This does not, however, make the Statute a rule that attributes the State's powers as these are always powers of direct and immediate constitutional origin. The powers of the Autonomous Communities, on the other hand, always stem immediately from the Statute and, therefore, only indirectly from the Constitution. More than a few of the State's powers are indirectly determined by the Statutes, albeit only in the "whether" and in the "quantum": in the first case because some powers will belong to the State only if they have not been assumed by the Autonomous Communities (STC 61/1997 dated March 20th, 1997); in the second case, because when State must retain some degree of jurisdiction with certain minimum contents and scope, the would-be greater contents and scope will depend on the terms on which the Autonomous Communities assume the part they are constitutionally entitled to.

5. The constitutional nature and function of the Statutes of Autonomy determine their possible content. In the same way, first of all and as already indicated, this content starts from the minimum listed in Article 147.2 CE and also, through an express constitutional provision, those matters referred to in certain provisions of the Constitution. In both cases, it is possible to speak of a constitutionally explicit content within the Statute. Together with this, there may be an implicit content inherent to the Statute's condition as the basic institutional rule (Article 147.1 CE), with all that this implies in terms of self-government, self-organization and identity. Under this heading, it is possible to include very disparate provisions and disciplines in the Statutes, albeit always respecting, obviously, the reserves established by the Constitution in favor of specific Laws or for the discipline of fundamental matters not included in the Statutes of Autonomy. Given the openness and flexibility of the territorial model, Statutes of Autonomy endowed with a content that goes further than that resulting from the minimum necessary under Article 147.2 CE would also be constitutionally admissible, to the point where their delimitation

would only be possible, from this jurisdiction, through the guaranteed observance of certain limits. It must be understood that constitutionally there is also room for a restricted conception of the material content of Statutes of Autonomy (limited to the explicit minimum) and a more extensive understanding, in which case the minimum to be guaranteed by this Court is no longer that ensuring the existence, identity and powers of the Autonomous Community but rather that resulting, on the one hand, from the limits marking the watershed between the Constitution and the duly established authorities, and, on the other, those ensuring the regular efficacy of the system as a whole.

6. In any case, a maximalist conception must always be opposed, first of all, by a quantitative limit, since the special rigidity of the Statute of Autonomy implies the petrification of its content, which may reach a point where it cannot be combined with an effective right to political participation in the exercise of the powers established under the Statute of Autonomy. In all other regards, the degree of regulatory density acceptable in a Statute of Autonomy is not a question that can be determined in abstract, but rather, for the examination of scenarios in which a challenge is raised on this basis, it is necessary to start from the principle that the reversibility of the regulatory decisions is inherent to the idea of democracy, with the exceptional exclusion of the political discussion of certain issues that, because they affect the system' s very foundations, are only accessible through wills expressed by more complicated procedures and with qualified majorities. All of this without prejudice, on the one hand, to the fact that the objections that might be raised to the technique of detailed regulation through particularly rigid rules are on many occasions nothing less than an objection of mere opportunity, without relevance, therefore, as a judgment on their constitutionality, sensu stricto; and on the other hand, that the Statutes of Autonomy are also the work of the democratic lawmaker (STC 247/2007, FJ 6). In addition, the same STC 247/2007 stated that "the Statutes of Autonomy may also establish, with a varying degree of regulatory specificity, central or core aspects of the institutions they regulate and the powers attributed in the material scopes corresponding to them under the constitution" (FJ 6), and this, with all the cautions associated with all abstracted considerations, excludes specification in detailed aspects.

Secondly, the material expansiveness of the Statutes is opposed by certain qualitative limits. Precisely those defining all the differences of concept, nature and purpose mediating between the Constitution and the Statutes, such as those delimiting the unmistakable scopes of the power to constitute, on the one hand, and the powers so constituted, on the other. In particular, those affecting the definition of the constitutional categories and concepts, including the definition of the competency to define competencies corresponding solely and exclusively to the Constitution as an act of sovereignty, are inaccessible to lawmakers and fall only within the scope of the interpretative function of this Constitutional Court (STC 76/1983, dated August 5th, 1983, passim). In any case, these are considerations of principles that will have to be specified in due detail when judging on each of the provisions challenged, determining at that time the true measure of the degree of collaboration constitutionally necessary and admissible on the part of the lawmaker drafting the Statutes of Autonomy in the constitutional interpretation task characteristic of a democratic society.

7. The specific challenges by the appellants begin with those referring to the following paragraphs of the preamble to the Statute of Autonomy of Catalonia:

— "Catalonia's self-government is founded on the Constitution, and also on the historical rights of the Catalan people, which, in the framework of the Constitution, give rise to recognition in this Statute of the unique position of the Catalan Government".

— "In reflection of the feelings and the wishes of the citizens of Catalonia, the Parliament of Catalonia has defined Catalonia as a nation by an ample majority. The Spanish Constitution, in its Article 2, recognizes the national reality of Catalonia as a nationality".

— The final reference to the "exercise of the inalienable right of Catalonia to self-government". The foundations for the challenge argued by the appellants have been reflected in Fact 15 of this Judgment, with the following Notes setting out the positions of the State Solicitor (Fact 16), the Catalan Government (Fact 17) and the Parliament of Catalonia (Fact 18).

The Deputies submitting the present appeal have based their challenge on a premise openly disputed by the other parties to the proceedings, namely the very suitability of the preamble in order to serve as the subject of an action of unconstitutionality. We have certainly repeated since STC 36/1981 dated November 12th, 1981, FJ 2, that a "preamble has no normative value", thus rendering it unnecessary, and even incorrect, to include it in "an express declaration of unconstitutionality reflected in the part containing the ruling" of a Judgment handed down by this Court (ibid.). Such a lack of normative value entails, in effect, that, as stated in STC 116/1999 dated June 17th, 1999, FJ 2, preambles "cannot be the direct subject matter of an action of unconstitutionality (SSTC 36/1981, FJ 7; 150/1990, FJ 2; 212/1996, FJ 15; and 173/1998, FJ 4)". However, lack of normative value is not equivalent to a lack of legal value, in the same way as the impossibility of being used as the direct subject matter of an action of unconstitutionality does not imply that preambles are inaccessible for any pronouncement by our jurisdiction insofar as a possible accessory in proceedings referring mainly to a normative provision. In fact, even in STC 36/1981, an express declaration was given on the value of the preamble then examined for interpretation purposes, albeit a value proclaimed in the Grounds and not expressed formally in the ruling.

Our way of acting in the aforesaid STC 36/1981 is a consequence of the legal nature of preambles and recitals in laws, as these, without prescribing any legally binding effects and thus lacking in the mandatory value of Legal Rules, have a legal value classified as guidelines for interpreting such rules. Their intended recipient is therefore the interpreter of the Law rather than parties obliged to conduct themselves in a way that, by definition, cannot be imposed by the preamble. The legal value of preambles to laws is therefore exhausted in their qualified condition as a hermeneutic criterion, since, as the expression of the reasons on which the lawmaker in person has established the sense of the legislative action they contain and sets out the intended goals of the action expressed, they constitute a particularly relevant element for the determination of the sense of legislative wishes, and, hence, for the adequate interpretation of the enacted rule.

With regard to the preamble of a Statute of Autonomy, it is evident that its condition as qualified interpretation will never be able to be imposed on that which, on a sole and exclusive basis and with true normative scope, can only be applied to the interpretative authority of this Court, that is to say its condition as the supreme interpreter of the Constitution and, with that, of all of the laws vis-à-vis their relationship to the Constitution as a condition for judging their validity. For this reason, as the grounds for our resolutions is the locus for the reasons of the interpretation justified in each case by the decisum about the validity of the judged rule, it is obvious that only there can be found the analysis of constitutionality deserving of the qualified interpretation intended by the lawmaker for the regulation we are judging.

As for what matters here, the paragraphs of the preamble to the Statute of Autonomy questioned by the appellants are questioned because they refer to concepts and categories that, later projected throughout the articles, claim for the Statute of Autonomy, in their opinion, a foundation and a scope that are incompatible with its condition as a rule subordinated to the Constitution. Such concepts and categories are the "historical rights", the "nation" and "citizenry", all effectively formalized in various provisions of the Statute of Autonomy that, in connection with those paragraphs, have also been expressly challenged. Therefore, it must be in light of the judgment of these provisions that we make a pronouncement as well on the interpretation to be inferred from the said paragraphs in the preamble and, in consequence, should it be concluded that such an interpretation is constitutionally inadmissible, that we

deprive the preamble, on that point, of the legal value intrinsic to it, namely its status as qualified interpretation.

8. With regard to the normative projection of the statements in the preamble disputed by the appellants, we shall begin our judgment of the provisions in the preliminary title challenged with the examination of Articles 2.4, 5, 7 and 8 of the Statute of Autonomy, dealing later with the remaining articles included in the preliminary title and also appealed, namely Articles 3.1, 6 (sections 1, 2, 3 and 5) and 11 of the Statute of Autonomy.

The reasons alleged by the appellants against the constitutionality of that first set of provisions and the reasons to the contrary argued by the other parties to the proceedings have been set out in Facts 19, 21, 26 and 27. The underlying question is summarized in the foundations of the Statute of Autonomy, which for the appellants could never be, as inferred, in their opinion, from the provisions appealed when interpreted in the light of the preamble, neither the nation, people or citizenry of Catalonia, nor the historical rights invoked by the Statute of Autonomy, but solely and exclusively from the Constitution itself, the foundation for which is the indivisible and single Spanish Nation.

It cannot be concealed that the use of such conceptually compromised terms as those of Nation and People or the reference to historical rights in the context of the invocation of foundations on which to establish the Legal System as a whole or some of its sectors may give rise to ambiguities and controversies in the political sphere. Our sphere, however, is merely the application of reason in Law; more precisely, of constitutional legal reasoning, a terrain in which the will to constitute formalized in the Constitution leaves no room for doubt about the origin and foundation of the entire order constituted, nor does it allow any more controversy than that, structured in Law, to be definitively resolved by this Constitutional Court.

The notion that the Statutes of Autonomy, like any other legislation in the Spanish Legal System, have their legal basis in the Spanish Constitution is such an elementary issue and a matter of principle that it admits no discussion. This is not disputed by the parties to these proceedings nor, in particular, is it questioned by the Statute of Autonomy challenged, whose integration into the Legal System has taken place strictly through the channels mandated in the Constitution itself, as proclaimed in its Article 1 that "Catalonia, as a nationality, exercises its self-government constituted as an Autonomous Community in accordance with the Constitution and with this Statute of Autonomy, which is its basic institutional rule". This declaration, in constitutionally impeccable terms, endows Catalonia with those attributes making it an integral part of the State founded in the Constitution: a nationality constituted as an Autonomous Community with the basic institutional rule of its own Statute of Autonomy. Concepts and categories, therefore, that are meticulously constitutional insofar as they are created and defined pursuant to the Law disclosed in the Spanish Constitution.

The unambiguous declaration of principle expressed in Article 1 of the Statute of Autonomy, namely the constitution of Catalonia as a subject of Law "in accordance with the Constitution" and with a rule, the Statute of Autonomy, subordinated to the same, naturally implies the assumption of the entire legal universe created by the Constitution, the only context in which the Autonomous Community of Catalonia can, in Law, find its meaning. In particular, this implies the obvious corollary that its Statute of Autonomy, founded on the basis of the Spanish Constitution, takes on board as its own, by logical derivation, the inherent foundation proclaimed by the Constitution for itself, namely "the indissoluble unity of the Spanish Nation" (Article 2 CE), at the same time as it recognizes the Spanish people as the holders of national sovereignty (Article 1.2 CE) and that their will is formalized in the positive provisions emanating from the power to constitute. For this reason, in short, the only meaning that can be attributed to the reference in the Statute of Autonomy's preamble to the "inalienable right of Catalonia to self-government" is that of the affirmation that such a right is none other than that "recognized and guaranteed" in Article 2 CE to the "nationalities and Autonomous Communities" comprised

in the same. A constitutional right, therefore, and, in virtue of that inalienable quality, i.e. not available to the powers constituted in accordance with the same but only within the scope of the power of constitutional revision.
Pursuant to the understanding set out above, the challenge to the expression "inalienable right of Catalonia to self-government" contained in the preamble to the Statute of Autonomy must be dismissed.
9. The foregoing having been established, there can be no misunderstanding on the proclamation effected by Article 2.4 of the Statute of Autonomy to the effect that "the powers of the Autonomous Community stem from the people of Catalonia", as it is obvious that, pursuant to the very Article 1 of the Statute of Autonomy, the Autonomous Community of Catalonia stems in Law from the Spanish Constitution and, with that, from the national sovereignty proclaimed in Article 1.2 CE, in the exercise of which, its holders, the Spanish People, have given themselves a Constitution that states and wishes to be founded on the unity of the Spanish Nation. On the contrary, the meaning fully deserved by Article 2.4 of the Statute of Autonomy is given by its clear prescriptive vocation of the democratic principle as the guide for the exercise of the powers of the Autonomous Communities, which the provision expressly submits to the Constitution, on which a democratic State is erected (Article 1.1 CE), and the Statute of Autonomy. Therefore, in the context of Article 2 of the Statute of Autonomy, it is not a matter of establishing for the Catalan devolved powers any foundation other than that expressed in Article 1 of the Statute of Autonomy, but rather of making democratic legitimation the principle that is to govern the Autonomous Community's exercise of the powers conferred on it by the Statute of Autonomy from the Constitution. The people of Catalonia in Article 2.4 of the Statute of Autonomy are not, therefore, a legal subject that enters into competition with the holder of national sovereignty whose exercise has allowed the institution of the Constitution from which stems the Statute of Autonomy that is to be enforced as the basic institutional rule for the Autonomous Community of Catalonia. The people of Catalonia thus comprise the set of Spanish citizens who are to be the recipients of the rules, provisions and acts into which the exercise of the public power constituted in the Autonomous Community of Catalonia is to be translated. Precisely because they are the recipients of the mandates of that public power, the constitutional principle of democracy imposes that they should take part, through the channels foreseen in the Constitution and the Statute of Autonomy, in the formation of the will of the powers of the Autonomous Community. Such is the intention justifying the expression "people of Catalonia" in Article 2.4 of the Statute of Autonomy, absolutely different, from a conceptual point of view, from that represented in our Legal System by the expression "Spanish People", sole holder of national sovereignty at the origin of the Constitution and of all rules deriving their validity from the same.
Understood in this way, the challenge to Article 2.4 of the Statute of Autonomy must be dismissed.

10. Pursuant to Article 5 of the Statute of Autonomy, "the self-government of Catalonia is also based on the historical rights of the Catalan People, on its secular institutions, and on the Catalan legal tradition, which the present Statute incorporates and modernizes under Article 2, Transitional Provision Two, and other provisions of the Constitution", and this, in the opinion of the appellants, implies granting the Statute of Autonomy a power to update historical rights and thus the assumption of powers through channel that the Constitution reserved in its first additional provision for the territories with traditional charters of autonomy.
Article 5 of the Statute of Autonomy would be clearly unconstitutional if it attempted to gain for the Statute of Autonomy a foundation outside the Constitution, even where it added to that dispensed to it by the latter. However, the entire language of the provision allows that interpretation to be ruled out, together with the interpretation that this has been an attempt to

attract to the Autonomous Community of Catalonia the historical rights referred to in the first additional provision of the Constitution. Both the historical rights and the secular institutions and legal tradition of Catalonia invoked by the Statue of Autonomy are only those "from which derives the recognition of the Generalitat's unique position in relation to civil law, language, culture, the projection of these in the area of education, and the institutional system by means of which the Generalitat is organized", as the same Article 5 of the Statute of Autonomy concludes. These are then historical rights in a clearly different sense from that corresponding to the rights of territories with traditional charters referred to in the first additional provision of the Constitution. This is because they refer to rights and traditions of Private Law or, within the scope of Public Law, to the right that the second transitional provision of the Constitution has wished to attribute to the territories that in the past may have held referenda to adopt Statutes of Autonomy with a view to facilitating their constitution as Autonomous Communities through a specific procedure. With that limited scope, completely different from what the Constitution has recognized for the rights of the territories with traditional charters under the first additional provision, Article 5 of the Statute anticipates the range of powers attributed, in accordance with the Constitution, to the Autonomous Community within the scope of the language, culture and education and renders explicit the reasons justifying the specific institutional system in which the Generalitat is organized.

It can only be incorrectly understood that such historical rights are also legally a foundation for the self-government of Catalonia, as its expressed constitutional scope can only explain the assumption by the Statute of Autonomy of certain powers within the framework of the Constitution, but never the basis for the existence in Law of the Autonomous Community of Catalonia and its constitutional right to self-government. The rights, institutions and traditions referred to in the provision, far from establishing a basis in the true sense for the self-government of Catalonia, derive their constitutional relevance from the fact they are assumed by the Constitution and, through it, are the foundation, in constitutional terms, for the institutional and competency system instituted with the Statute of Autonomy.

In short, Article 5 of the Statute of Autonomy is not contrary to the Constitution interpreted in the sense that its reference to "the historical rights of the Catalan people" does not refer to the contents of the first additional provision of the Constitution nor is it a ground for the self-government of Catalonia outside the Constitution itself, and this will be so stated in the ruling of this Judgment.

The statement in the preamble that "Catalonia's self-government is founded on the Constitution, and also on the historical rights of the Catalan people, which, in the framework of the Constitution, give rise to recognition in this Statute of Autonomy of the unique position of the Generalitat" must be understood in the same terms.

11. According to the Article 7 of the Statute of Autonomy, "Spanish citizens legally resident in Catalonia benefit from the political status of Catalans or citizens of Catalonia". The appellant Deputies maintain that the concepts of "citizenship" and "citizen", also used in Articles 6.2 and 11.2, may only be applied to Spaniards insofar as they are the only holders of national sovereignty. Without the need to repeat here the arguments set out when analyzing the constitutionality of Article 2.4 of the Statute of Autonomy, it is sufficient to say that the petitioners would be right if the "Catalan citizenship" referred to in Article 7 of the Statute of Autonomy (and thereby those in Articles 6.2 and 11.2) were attempting to oppose that of Spanish citizenship, by offering it as a different status applicable to a person not included in the Spanish People under Article 1.2 CE and thereby the holder of some kind of sovereign power impossible to align with that exercised by the constituting power whose will has been formalized in the Spanish Constitution.

On the contrary, however, Article 7 of the Statute of Autonomy limits itself to determine the subjective scope of projection of the power of self-government constituted with the Statute of

Autonomy within the framework of the Constitution. And it does so by classifying as Catalans those Spanish citizens living in Catalonia, from which it is clearly inferred that Catalan citizenship is not merely a kind of subset of "Spanish citizenship", which it cannot ontologicall y contradict. All this without prejudice to the fact that, in the sense of Article 7, i.e., understood as the set of individuals affected by certain legal circumstances enabling them to qualify as the first recipients of the rights and duties established by the Statute of Autonomy, the citizens of Catalonia cannot be confused with the sovereign people conceived as "the ideal unit for the attribution of the power to constitute and, as such, the basis for the Constitution and the Legal System" (STC 12/2008 dated January 29th, 2008, FJ 10), as it is clear that the grounds determining a legal status, whether it be that of voter, as in the case contemplated in STC 12/2008, or, as in this case, that of a citizen of Catalonia, "do not affect ... this ideal unit, but rather the subset of those who, as citizens, are subject to the Spanish Legal System and do not have, as such, more rights than those guaranteed to them by the Constitution, with the contents that, once the unavailable constitutional minimum has been assured, may be determined by the duly constituted lawmaker" (STC 12/2008, loc. cit.), depending on each case either the State or the regional legislator.

From the foregoing, the challenge to Article 7 of the Statute of Autonomy must be dismissed, together with that to the references to citizens of Catalonia contained in Articles 6.2 and 11.2.

12. Article 8 of the Statute of Autonomy has been challenged for classifying as "national" the symbols of Catalonia listed in the various subsections of the provision. In the opinion of the appellants, the adjective unambiguously refers to the Catalan nation, incompatible with the Spanish Nation in which the Constitution has its foundations in accordance with Article 2 CE because it contradicts the concepts of unity and indivisibility. This reference would be confirmed, in the opinion of the appellants, by the declaration included in the preamble about the national status of Catalonia proclaimed in due course by the Parliament of Catalonia.

It is necessary to agree with the State Solicitor and with the Parliament of Catalonia and the Catalan Government that the term "nation" is extraordinarily protean in the light of the very different contexts in which it usually appears as a perfectly finished and defined conceptual category, imbued in each one with its own enrooted meaning. It is indeed possible to speak of nation as a cultural, historic, linguistic, sociological and even religious reality. But the nation of importance here is solely and exclusively the nation in its legal and constitutional sense. And in that specific sense, the Constitution does not recognize anything other than the Spanish Nation, the mention of which opens its preamble, on which the Constitution is based (Article 2 CE) and with which it expressly qualifies the sovereignty that, when exercised by the Spanish people as its sole acknowledged holder (Article 1.2), has been manifested as the wish to constitute the State in the positive provisions of the Spanish Constitution.

In the context of the democratic State instituted by the Constitution, it is obvious that, as has been repeated above, it can include any and all ideas that can be defended without resorting to a breach of the procedures established by the Legal System for the formation of the general will as expressed in the legislation (in representation of them all, please see STC 48/2003 dated March 12th, 2003). And a defense of ideological concepts that would attempt to determine a certain group as a national community, based on an understanding of the social, cultural and political reality, would particularly fit. This may in fact be a principle that could actually be the basis for the formation of a constitutionally legitimated will that can translate that understanding into a legal reality, through a timely and appropriate reform of the Constitution. However until that happens, the rules of the Legal System cannot be ignored or lead to any doubt about the "indissoluble unity of the Spanish Nation" proclaimed in Article 2 CE. Under no circumstances can any nationality be claimed other than the one specified in the Constitution proclaimed by the will of that Nation, nor through an ambiguity that is completely irrelevant in the

judicial/constitutional context, the only guide that this Court can follow, by referring the term "nation" to any other subject that is not the people holding that sovereignty.

The reference in Article 8 to the national symbols of Catalonia could lead to confusion, in the event of an attempt to remove from the preamble the declaration of the Parliament of Catalonia regarding the Catalan nation, some of the legal consequences that specifically contradict the sense of Article 2 CE regarding solely and exclusively the Constitutional relevance of the Spanish nation. However it can also be interpreted, according to the Constitution, that the qualification of the Catalan symbols as "national" grants only the condition of symbols of a nationality constituted in Autonomous Community, as an exercise of the right recognized and guaranteed by Article 2 CE, as expressly proclaimed in Article 1 of the Statute of Autonomy and repeated in its Article 8. This deals, in short, with the symbols of a nationality but with no intention to challenge the competency or counteract the symbols of the Spanish nation.

Regarding the categorical meaning of Article 2 CE, the mention of the national reality of Catalonia and the declaration of the Parliament of Catalonia on the Catalan nation must be held as removed from the scope of any legal interpretation, without prejudice to the concept that the ideological, historic or cultural self-representation of a group as a national reality in any context that is not legal and constitutional, is fully acceptable in the democratic Legal System, as an expression of a perfectly legitimate idea.

For all of the above, the terms "nation" and "national reality" that are used in the preamble with reference to Catalonia, have no interpretative legal effect; and given the special significance of the preamble to a Statute of Autonomy this shall be so stated in the ruling. The term "nationals" used in Article 8.1 likewise concords with the Constitution interpreted in the sense that this term exclusively refers, in meaning and use, to the symbols of Catalonia, "as a nationality" (Article 1 of the Statute of Autonomy), and integrated in the "inseparable unity of the Spanish nation" as established in Article 2 CE, and it shall be so stated in the ruling.

13. According to Article 3.1 of the Statute of Autonomy "the relationship of the Generalitat with the State is based on the principle of mutual institutional loyalty, is regulated by the general principle according to which the Generalitat is State, by the principle of autonomy, by that of bilateralism and by that of multilateralism." The challenge presented here is due to a question of principle, as the appellants hold that this provision sets the bases for the reasoning of what the State will ultimately translate into a model of the relations between the Autonomous Community and the State, placing the Autonomous Community on an equal footing with the State. More specifically, it calls into question the constitutionality of the so-called "principle of bilateralism", with the other parties to the proceedings arguing that that principle is one of several, and that the form of relationship inferred by the petitioners does not follow from it. The reasons for both sides have been summarized in Fact 20 of this Judgment.

As the parties concur in transferring the debate of this particular matter to the study made on the challenge to the provisions included in Title V of the Statute of Autonomy ("Institutional relations of the Generalitat"), we shall reserve until then our decision on the constitutionality of the model for the relationship between the State and the Government of the Autonomous Community resulting from its specific and concrete regulatory text. In view of this, we must decide here that Article 3.1 of the Statute of Autonomy in its strict literal sense and setting aside the consequences that under it and in regulatory terms may arise in terms of the articles also appealed in Title V, the provision in question does not deserve any censure as unconstitutional.

Article 3.1 simply provides that the relationship between the Government of the Autonomous Community and the State is founded on a series of principles that are constitutionally indisputable. That "Generalitat is State" is proclaimed as a general principle, an affirmation that is indisputable insofar as the State, in its broadest sense, i.e., as the Spanish State established in the Spanish Constitution, includes all the Autonomous Communities into which it is territorially organized (see STC 12/1985 dated January 30thh, 1985, FJ 3), and not just that which is more

properly referred to as the “Central State”. The Spanish State is in no way confused with the latter, but rather includes it to form the Spanish State as a whole, in union with the Autonomous Communities. Article 152.1 CE does not in vain attribute the ordinary territorial representation of the State to the Presidents of the Autonomous Communities, including Catalonia, as the Generalitat is, with perfect propriety, the State; as they also are the representatives of the “Central State” within the scope of their respective competences, a concept including only the central or general institutions of the State, and not the institutions of the Government of the Autonomous Community.

This ambiguity with regard to the term “State” is undoubtedly based on the misunderstanding that could arise from a reading of Article 3.1 of the Statute of Autonomy, as it is evident that the principle that “Generalitat is State” cannot be used to govern relationships between the Government of the Autonomous Community and that same State with which it is identified and thereby confused with the necessary element with which it is constituted; on the contrary, the State whose relationship is discussed here can only be the so-called “Central State”. Article 3.1 of the Statute definitely acquires its full sense as a provision referring to relations between two parts of the Spanish State: the Catalan Government and the central institutions of the State.

The Statute of Autonomy, as far as it contains the basic regulation of the Catalan Government and is approved by an organic law, can express the principles that must inspire the relationship between the central State and the institutions of the Autonomous Community of Catalonia. Nevertheless, apart from the expression of these principles, the regulation of this relationship must take into account some structural requirements that, like the principle of cooperation of each Autonomous Community with the State and all of them together, can only be inferred from the Constitution itself and, therefore, from the jurisdictional body that interprets it: i.e., from this Constitutional Court. In any event and with regard to the case discussed here, the provisions of Article 3.1 of the Statute of Autonomy according to which the Government of the Autonomous Community is related to the Central State based, among other things, on the principle of bilateralism do not represent a violation of the Constitution, inasmuch as this means only that, given that they are both the “Spanish State”, their respective positions would be imposed in each case and therefore the constitutional system for distributing competencies. Obviously transferring this principle of bilateralism to the relationship between the Government of the Autonomous Community and the Spanish State would be constitutionally impossible, as it can relate with the other only in terms of integration, and not of otherness.

Now this relationship, included in the only relationship possible, that between the Government of the Autonomous Community and the “central” or “general” State, in addition to not excluding multilateralism as recognized by the provision challenged here, cannot be understood as an expression of the relationship between political entities that are equal, capable of negotiating on that basis because, as this Court has stated beginning in its first decisions, the State is always in a position of superiority over the Autonomous Communities (STC 4/1981 dated February 2nd, 1981, FJ 3). According to this, the principle of bilateralism can be projected only within the sphere of relations between bodies as a statement of the general principle of cooperation implicit in the territorial organization of our State (STC 194/2004 dated November 4th, 2004, FJ 9).

Based on the above finding, the challenge to Article 3.1 of the Statute of Autonomy must be dismissed

14. Facts 23, 24, 25 and 26 set forth the positions of the parties with regard to Article 6 of the Statute of Autonomy, whose sections 1, 2, 3 and 5 have also been challenged. Despite this and as noted by the State Solicitor and the Government and the Parliament of Catalonia, the lack of any express explanation for that challenge to sections 3 and 5 of Article 6 must excuse any decision by us with regard to them. The provisions decided here must therefore be condensed to just two questions: on the one hand, the condition of Catalan as a native language of Catalonia

with the resulting consequences referred to in Article 6.1 of the Statute; and on the other the duty of the citizens of Catalonia to know it, established in Article 6.2 of the Statute of Autonomy.
a) We must focus here on the questions of principle specified above and remit other provisions, specifically the linguistic system established by the Statute of Autonomy, for decision under the terms set forth in Articles 33 to 36, 50.4 and 5, 102 and 147.1 a) of the Statute of Autonomy.
Beginning with the question relating to the unique nature of the Catalan language and any consequences that may arise from this, it is entirely coherent for the parties, as could only occur, to specify that the Statute of Autonomy for Catalonia is the regulation with competence to grant the Catalan language the legal qualification of official language of that Autonomous Community (Article 3.2 CE), shared with Spanish as the official language of the State (Article 3.1 CE). As stated in STC 82/1986 dated June 26th, 1986, FJ 2, "although the Constitution does not define but rather assumes what an official language is, the regulation governing this matter allows the affirmation that language is official independently of its reality and weight as a social phenomenon, when it is recognized by the public powers as the normal means of communication in and between them and in its relation to private subjects, with full validity and legal effects (without prejudice to specific spheres, such as the procedural sphere, and for specific purposes such as to avoid the impossibility of mounting a proper defense, the Laws and international treaties also allow the use of non-official languages not known by the officials). This implies that Spanish is the normal means of communication of and before the public powers in the Spanish Sate as a whole. By virtue of this, through section number 2 of the same Article 3 adding that the other Spanish languages shall also be official in their respective Autonomous Communities, it likewise follows that the consequent co-official nature is co-official with respect to all the public powers located in the territory of the Autonomous Community, including the offices of the Central Administration and other state institutions and therefore meeting, in the strictest sense, the criterion delimiting the official nature of Spanish and the co-official nature of other Spanish languages for the territory, independently of the state (in the strictest sense), regional or local nature of the other public powers."
The definition of Catalan as "the native language of Catalonia" cannot represent an imbalance in the nature of both languages as co-official pursuant to constitutional law, to the detriment of Spanish. In the event that as the State Solicitor alleges the term "native language" would mean that Catalan is a language that is unique or exclusive to Catalonia in comparison with Spanish which is the language shared by all the Autonomous Communities, then the text of Article 6.1 of the Statute cannot be objected to. If on the other hand this would lead to the conclusion that Catalan is the only language normally used and the preference of the public power, even if only the regional public power, then this would contradict one of the characteristics that constitutionally define the official nature of the language; that is, as we just recalled with the quotation from STC 82/1986, that official languages constitute the "normal means of communication in and between [the public powers] and in their relationship with the individual, with full validity and legal effects". Consequently, all official languages, even where that quality is shared with another Spanish language, are the languages normally used by and with the public power. And likewise so is Spanish for and before the Catalan Public Administrations which, as the autonomous public power in Catalonia, cannot have a preference for any of the two official languages.
It must be noted that the declaration of Catalan as an official language is contained in Article 6.2 of the Statute of Autonomy, from which declaration derive the effects that, with regard to the conditions governing official languages, we have said derive from the Constitution itself. Since it is evident that the Statute of Autonomy cannot represent a contradiction to those consequences, it can only be understood that the lawmakers wanted to limit themselves in Article 6.1 of the Statute of Autonomy to only the task that the Constitution reserves exclusively to the Statutes of Autonomy, that is to qualify a language as an official language in the "respective" Autonomous

Community as stated in Article 3.2 CE. That article in effect does not allow Statutes of Autonomy to proclaim any language of Spain, other than Spanish, to be declared official; just as Article 143.1 CE constrains the right to autonomy on the concurrence of a series of characteristics to allow the territories in which it is spoken to be identified as a "historic regional entity". Any language of Spain other than Spanish which could be proclaimed as an official language by a Statute of Autonomy is the language of the "respective" Autonomous Community; that is it is the characteristic, historic, exclusive language in contrast with the language that is common to all Autonomous Communities, and in this case, inherent.

The unique nature of a language other than Spanish used in Spain is therefore the mandatory constitutional condition for a language to be recognized as an official language by a Statute of Autonomy. Now, Article 6.1 of the Statute of Autonomy, by declaring that Catalan as the language of Catalonia is the language "of normal use" by the Public Administrations and the means of public communication in Catalonia completes the function of accrediting the effective compliance with that constitutional condition in the case of Catalan, while the "normality" of that language is no more than the supposition that accredits a reality that, characterized by the normal and customary use of Catalan at all levels of social life in the Autonomous Community of Catalonia, justifies its declaration as the official language in Catalonia, with the legal effects and consequences that, based on and within the framework of the Constitution, must derive from that official nature and its coexistence with Spanish.

In addition to declaring Catalan the "language of normal use", Article 6.1 of the Statute of Autonomy declares that Catalan as the language of Catalonia is also the language of "preferential use" in the Public Administration bodies and public media in Catalonia. Unlike the notion of "normality", the concept of "preference" by definition transcends a mere description of a linguistic reality to imply that one language has precedence over another in the territory of the Autonomous Community, ultimately imposing the prescription of a priority use of one of them, or in this case the use of Catalan over Spanish, thereby affecting the essential balance between two equally official languages that can in no case be treated as privileged. The definition of Catalan as the language of Catalonia cannot justify the Statute's imposition of the preferential use of that language to the detriment of Spanish as another official language in the Autonomous Community by the Public Administration bodies and the public media of Catalonia obviously without prejudice to the fact that the lawmaker can adopt, as he may, measures of linguistic policy that are appropriate and that are provided in order to correct historic situations, if any, of an imbalance of one of the official languages over the other, thereby remedying the secondary position or deferral that either may have. Consequently the term "and preferential use" of Article 6 does not admit an interpretation in accordance with the Constitution, and must be declared unconstitutional, and null and void.

With regard to the second consequence that is linked to the unique nature of Catalan by Article 6.1, that is to its definition as "the language of normal use for teaching and learning in the education system", it must be remembered that "the constitutional legitimacy of a teaching in which the vehicle of communication is the language of the Autonomous Community and the co-official language of the territory together with Spanish, cannot be subject to question (STC 137/1986, FJ 1), inasmuch as this consequence derives from Article 3 CE and from the provisions of the respective Statute of Autonomy" (STC 337/1994 dated December 23rd, 1994, FJ 9). However "it must be remembered that we previously established, in Ground 10 of STC 6/1982, that it is the duty of the State to oversee respect for linguistic rights in the educational system, and in particular, the right to receive teaching in the official language of the State; as we cannot forget that the constitutional duty to know Spanish (Article 3.1 CE) presupposes the satisfaction of the right of citizens to know it through the teaching received in basic studies" (STC 337/1994, FJ 10). Catalan must therefore be a linguistic vehicle as well as that used for learning in education, but not the only one that is described as such, rather with the same right

as Spanish while it too is an official language of Catalonia. To the degree that the specific legal system governing linguistic rights in the sphere of education is regulated by Article 35 of the Statute of Autonomy, we defer until our decision on that provision the setting out of the reasons supporting our statement on the constitutionality of the linguistic model of teaching established in the Statute. However at this point we wish to include in our argument as a matter of principle that Spanish cannot cease to be also a teaching and learning language.

b) The question relating to the constitutionality of the Statute's imposition of the duty to know Catalan (Article 6.2) must be resolved based on the principle that "said duty is not imposed by the Constitution and is not inherent to the co-official nature ... Article 3.1 of the Constitution establishes a general duty to know Spanish as the official language of the State, which duty is concordant with other constitutional provisions recognizing the existence of a common language for all Spaniards, and whose knowledge can be assumed in any event, regardless of residence or domicile. The same does not occur, however, with the other co-official languages of Spain within the respective Autonomous Communities, as the article cited above does not establish that duty for them" (STC 84 dated June 26th, 1986, FJ 2). However the point of relevance here is whether the nonexistence of a constitutional duty to know the official languages of Spain, other than Spanish, represents a prohibition on imposing that duty in a Statute of Autonomy, or whether on the contrary that is an option open to the drafters of the Statute and therefore a legitimate option.

Of course and as admitted in the abovementioned STC 82/1986, the fact that the Constitution does not recognize the right to any co-official languages other than Spanish does not prevent the Statutes of Autonomy from guaranteeing that right. However the requirement to know these languages is a completely separate matter. The constitutional duty to know Spanish, more than an "individualized and enforceable duty" (STC 82/1986, FJ 2) to know a language, actually contrasts the ability of the public power to use a specific language as a regular means of communication with the citizens while not allowing them the right to request the use of another —except for the cases, irrelevant here, which may involve the right due process (STC 74/1987 dated May 25th, 1987)— so that acts of imperium that are the object of communication can regularly occur with all their legal effects. The public powers have no equivalent capacity in the case of co-official languages that are not Spanish, as citizens that are residents of the Autonomous Communities with co-official languages have the right to use both languages in their relations with the authority, but only the duty —imposed by the Constitution— to know Spanish, thereby guaranteeing communication with the public power with no need to demand knowledge of a second language. This duty of the citizen corresponds with the correlated right or authority of the public power; since the Administration has no right to address citizens exclusively in Catalan, neither can it presume that they are familiar with Catalan, and therefore formalize this presumption as a duty of the citizens of Catalonia.

Article 6.2 of the Statute of Autonomy would be unconstitutional and null if its intention was to impose a duty to know Catalan equivalent in meaning to the constitutional duty to know Spanish. Despite this, the provision naturally allows a different interpretation in accordance with the Constitution, a provision that sends a mandate to the public powers of Catalonia to adopt "the measures necessary to facilitate ... compliance with this duty". It is evident that this can only deal with an "individualized and demandable" duty to know Catalan; i.e. a duty that is different from the duty regarding Spanish under the provisions of Article 3.1 CE (STC 82/1986, FJ 2). As a result, there is no contrast with the authority of the public powers of the Autonomous Community to use only Catalan in its relations with the citizens, which would be unallowable; on the contrary it does not specify a general duty for all citizens of Catalonia, but rather imposes an individual and binding duty that has a specific and appropriate place in the sphere of education as seen by Article 35.2 of the Statute of Autonomy, and in those aspects regarding the special relations that are binding on the Catalan Administration with its officials, required to satisfy the

right to a linguistic option that is recognized in Article 33.1 of the Statute of Autonomy. Whether that specific legal code for that individualized and demandable right is or is not in accordance with the Constitution will have to be studied at the time of a review of the constitutionality of those provisions which are also part of these proceedings. However the only relevant matter at this point is that the duty to know Catalan, conceived as a duty that is different from the duty to simply use Spanish, in other words as a duty that is not generally legally enforceable, has its own purpose which justifies this as a mandate and allows it to be interpreted as in accordance with the Constitution.

Interpreted under these terms, Article 6.2 of the Statute of Autonomy is not contrary to the Constitution, and this will be so stated in the ruling of this judgment.

16. Title I of the Catalan Statute of Autonomy lists a series of "Rights, obligations and governing principles", set out in five chapters that group Articles 15 to 54, several of which are challenged by the petitioners. The title was criticized as a matter of principle in the complaint for the reasons set forth in Fact 11 which deal with the supposed suitability of a Statute of Autonomy to include fundamental rights, or to affect rights recognized as fundamental, in Articles 15 to 29 of the Spanish Constitution. This objection was challenged in the rest of these proceedings with the arguments referred to in Facts 12, 13 and 14.

Fundamental rights are strictly those rights that bind all legislators, i.e., the National Parliament and the Legislative Assemblies of the Autonomous Communities, without exception, in order to guarantee freedom and equality. That limitative function can be carried out only from the standard that is common and superior for all legislators, i.e. from the Constitution, the Magna Carta converting all the rights recognized therein into a limit that is insuperable by all the powers constituted and given a content that challenges all of these equally with the same substantive scope by virtue of the form of jurisdictions (judiciary and constitutional) that deal with their definition and enforcement. These rights are therefore not recognized in the Constitution as fundamental, but rather justly determined as such by proclamation in the standard that is the expression of the constituting will.

The rights recognized in the Statutes of Autonomy must therefore be different. More specifically, rights that bind only the autonomous legislator —as is indisputably seen from the Statute of Autonomy challenged whose Article 37.1 , which is also challenged and which will be discussed and decided later herein, in principle circumscribes the public power of Catalonia and, depending on the nature of each right granted to individuals, the scope of those obliged by the rights recognized in Chapters I, II, and III of Title I— as well as rights that are materially linked to the regional sphere of jurisdiction expressly detailed, as we will see, in Article 37.4. Now then, the same category of "law" can cover very different legal realities, and it is these that must be attended to more than just as nomen, to conclude whether their inclusion in a Statute of Autonomy is or is not constitutionally possible. The term "right" in the Constitution itself in effect covers both true subject rights as clauses to legitimate the development of certain legislative options, although in both cases these always deal with mandates addressed to the legislator, either ordering an action or an omission that become subjective claims enforceable in the Courts of Justice; or requiring that a result be pursued without specifically prescribing the means to achieve it and without making that obligation the content of any subjective right, which will only come about, where applicable, from the rules handed down for its fulfillment. In short, rules prescribing purposes without imposing the means or, more precisely, providing the legitimate authority in the political order with the public means for a particular purpose.

The second type of rights, i.e. mandates for actions by the public powers, are especially frequent in the new Statute of Autonomy of Catalonia although as we will see there is no lack of proclamations on subjective rights sensu stricto. Expressly referred to as "governing principles", these are literally set forth as rights that the members of the Parliament of Catalonia must make real and the other regional public powers must respect. If pronounced constitutionally valid, the

mandates contained in them will in each case be binding exclusively on the Catalan public powers and of course, intended only within the framework of their jurisdictions. This type of statutory right is not subjective, but rather a mandate to the public powers (STC 247/2007, Grounds 13 to 15), and technically function as rules (prescriptive or directive, according to the specific case) governing the exercise of regional competencies. The natural result is a principle of differentiation that cannot be confused with the inequality or privilege banned by Articles 138.2 and 139.1 CE, as this would only go deeper into the diversity inherent in the State of the Autonomies (STC 76/1983 dated August 5th, 1983, FJ 2 a) and implicit in the plurality of Legal Systems which, founded on and reduced to unity in the Constitution, operate in different spheres of jurisdiction in which are acting the legislative and governmental powers whose exercise can legitimately be constrained from the same rule defining each of those particular spheres in accordance with the Constitution.

17. The distribution of competencies operating among the organic laws explains that the Statute of Autonomy cannot regulate the entire matter that in principle is reserved to the type of law through which it is approved, as occasionally the fundamental reserve is exclusive in both senses of the word, a certain Organic Law or (according to the Judiciary Organic Law) one of the types of organic laws. This in fact is the case of the organic laws that develop fundamental rights (Article 81 CE). That function of development cannot be made in an Organic Law that approves a Statute of Autonomy, for reasons that deal with the condition of a Statute of Autonomy as a basic institutional rule on the one hand, and a limited territorial scope on the other.

The first assumes that the Statute of Autonomy, as the primary rule of a territorial legal system, is mostly justified in the area of generality, abstraction and principles, areas that are not sympathetic with the discipline of developing a fundamental right whose proclamation and substantive definition (minimum content) must still be verified in the Constitution. Consequently the Statute of Autonomy can intervene only if it is a repetition; in other words, it will do only what has already been done in the Constitution. The normative function necessary is exhausted at that first level of abstraction, which can be followed only by the function of development, the process of culmination that does not correspond to the Statute of Autonomy. The second implies that the participation of the Statute of Autonomy in developing rights would redound in a plurality of systems of fundamental rights (as many as Statutes of Autonomy) which would affect the principle of equality of all Spaniards in terms of fundamental rights.

On the other hand the division between organic and ordinary law in terms of fundamental rights (development/regulation: Articles 81.1 and 53.1 CE) assumes that the Statute of Autonomy, as an Organic Law, cannot declare or develop fundamental rights or affect only fundamental rights, or even regulate the exercise of those rights. The regional legislator can do so, as applicable, like the ordinary legislator and in accordance with the constitutional distribution of competences, but not the legislator drafting a Statute of Autonomy (Organic Law). Consequently there is no paradox of any kind in the fact that because of its simplicity, regional law (ordinary law) can be made not to fit in a Statute of Autonomy (supra-regional law). In this case it is something else, as corresponds in the set of standards that are ordered according to the criterion of competency.

21. The petitioners challenge Articles 33, 34, 35 and 36 of Chapter III of Title I of the Statute of Autonomy relating to “Linguistic Rights and Obligations”, as well as by extension Articles 50 (paragraphs 4 and 5), 102 and 147 [section 1 a)]. The arguments put forward by them against the constitutional arguments of Articles 33 to 36 and 50 (paragraphs 4 and 5) of the Statute of Autonomy have been set forth in Fact 29, while the allegations regarding Articles 102 and 147.1 a) are summarized, respectively, in Facts 47 a) and 82 a). The positions of the other parties to the proceedings on the other hand have been put forward in Facts 30, 31 and 32 with regard to Articles 33 to 36 and 50 (paragraphs 4 and 5) of the Statute, while Facts 47 b), c) and d) and 82

b), c) and d) are a synthesis of the defenses made regarding the constitutionality of Articles 102 and 147.1 a).

Since the challenge to Article 33.1 of the Statute of Autonomy refers to the use of the term "citizen", all that is required regarding this point is a reference to Grounds 9 and 11 to dismiss the challenge to Articles 2.4 and 7.

Paragraphs 2, 3 and 4 of Article 33 of the Statute are challenged in that they impose a particular linguistic regulation on bodies and matters that are subject to the jurisdiction of the legislator of the Autonomous Community. Both the State Solicitor, the Catalan Government and Parliament hold that the Statute of Autonomy is the pertinent rule for setting the scope of the co-official nature of the Catalan language, a task that is verified in the paragraphs challenged, in their opinion in accordance with constitutional doctrine and in addition in terms that give the drafter of Statutes of Autonomy the specific discipline of the form in which the effective exercise of the right to a linguistic option will be assured in the spheres of their jurisdiction.

In Ground 14 above which discusses the constitutionality of Article 6 of the Statute of Autonomy, we noted that the Catalan Statute of Autonomy is the standard with jurisdiction to make Catalan the official language in that Autonomous Community (Article 3.2 CE), together with Spanish as the official language of the State (Article 3.1 CE). We remembered there, citing from STC 82/1986 dated June 26th, 1986, FJ 2, that according to the Constitution "a language is official, regardless of its reality and weight as a social phenomenon, when it is recognized by the public powers as a normal means of communication in and between them and with regard to private individuals, with full validity and legal effects", which "implies that Spanish is the normal means of communication of and before the public powers in the Spanish State as a whole". This is followed by Article 3.2 CE which provides that the co-official nature of other languages in Spain "is so with respect to all public powers located in the regional territory, not excluding bodies that are dependent on the Central Administration and other, in the strictest sense, State institutions".

It is therefore evident that the co-official nature of Catalan in the Autonomous Community of Catalonia can be a legal condition only by virtue of a decision that is reserved to the Statute of Autonomy of Catalonia, which must also define its legal system; that is, it must establish what we have called the "content inherent to the concept of co-official" or the "scope" (STC 82/1986, FJ 5 and 6; STC 123/1988, FJ 8 and STC 56/1990, FJ 40). Its status as an official language for all the public powers located in Catalonia, state, regional or local, therefore follows as a constitutional imperative with no need for any regulatory intermediation, so that all citizens have the right to use both languages in their relations with those public institutions (STC 134/1997 dated July 17th, 1997, FJ 2; and STC 253/2005 dated October 11th, 2005, FJ 10).

Section 2 of Article 33 simply formally declares the above, proclaiming the right of "each individual" to use the official language of their choice "in any judicial, notarial or registration procedures", and to "receive all official documentation issued in Catalonia in the language requested". With this provision —which has an equivalent in the sphere of public administrations in section 1 of Article 33 and is therefore not challenged— the Statute of Autonomy simply sets out the generic consequences of this co-official nature of Spanish and Catalan in the Autonomous Community of Catalonia, seen through the right of the individual to have a linguistic option in his relations with the public bodies with no privilege or oversight of either language. As a result, the challenge to Article 33.2 must be dismissed.

Sections 3 and 4 of Article 33 of the Statute of Autonomy, on the other hand, based on the right to a linguistic option inherent to the right to co-official languages and proclaimed in Article 33.2, attempt to ensure the effectiveness of that right in the spheres of exclusive State jurisdiction. Section 3 prescribes that "Judges and Magistrates, public prosecutors, notaries, registrars of property and companies, those responsible for the Civil Registry and those in the service of the Administration of Justice, must demonstrate, in order to serve in Catalonia, in the

form established by law, that they have an adequate and sufficient knowledge of the official languages which renders them fit to fulfill the functions of their post or workplace." Section 4 contains an identical provision regarding personnel that work for the offices of the State Administration in Catalonia. With all of this, in view of the fact that section 3 deals with a requirement in which the Statute of Autonomy, in articulating that requirement, specifically remits to "the form established in the laws", and as it is obvious that these can only be state laws by virtue of the reserves established in Articles 122.1, 124.3 and 149.1.5, and 18 CE, it is easy to see that these sections of Article 33 of the Statute of Autonomy barely reflect the section preceding them. That is, they are a mere formalization of a result that is inherent to the declaration contained in Article 6.2 of the Statute of Autonomy regarding what are co-official languages: the right to a linguistic option (Article 33.1), deriving from the right of the individual to be free from discrimination because of language (Article 32); and the individual right to exercise this option with the public institutions that are under the jurisdiction of the State requires the exclusive and essential intervention of the State legislator. In particular, the Judiciary Organic Law, as far as Judges are concerned.

Based just on this understanding and by virtue of the reasons stated, the challenge to Article 33.3 and 4 of the Statute of Autonomy must be dismissed.

The challenge to section 1 of Article 102 of the Statute of Autonomy must be dismissed based on the foregoing, inasmuch as it simply repeats the consequences with respect to Judges and Public Prosecutors of the principle inherent to the coexistence of two official languages already declared for all public powers of the State in sections 3 and 4 of Article 33. The challenge to Article 147.1 a) of the Statute of Autonomy must also be dismissed, but exclusively with regard to the principle that the effectiveness and consummation of this principle indisputably corresponds to State legislation, and exclusively with regard to the linguistic dimension of the proceedings for constitutionality verified here, without prejudice to our duty to return to this provision when other challenges are presented to it. Section 4 of Article 102 of the Statute must also be declared constitutional, given that the duty of employees working in the area of the administration of Justice and the Public Prosecutor's office in Catalonia to accredit knowledge of the two languages is generally and principally required in the provision as a result of that co-official nature of the two languages. The regulatory development of both statutory provisions by the competent political power, state or regional could occur, as applicable, only if and when this Court is requested to hear the pertinent proceedings for constitutionality of the specific terms under which the duty of those public servants to know both official languages, as a generic result of having co-official languages. In this case, the provisions now examined are limited here to the formalization of a guarantee for citizens' right to have a linguistic option.

For all of the above, the challenge to Article 102.4 of the Statute of Autonomy of Catalonia must be dismissed.

The challenge to section 2 of Article 102 of the Statute of Autonomy is not allowed inasmuch as under the Law of Catalonia, it presents a question that does not concern linguistic duties and rights and therefore will be studied at the time of the appeal challenging certain provisions in Title III. We likewise defer until that time the analysis of section 3 of Article 102, which refers to accrediting knowledge of the Law of Catalonia. With regard to the requirement in the provision to accredit knowledge of Catalan, the provision simply declares the principles discussed here and, because of its declarative nature with consequences constitutionally inherent to the co-official nature of the languages, cannot incur the criticism made by the petitioners for the reasons and with the understandings stated here. Consequently the challenge to Article 102.3 of the Statute of Catalonia must be dismissed.

Section 5 of Article 33 on the other hand would be contrary to the Constitution, if the intention of the Statute of Catalonia were to take away the condition granted to Catalan, as a co-official language, as a legally valid means of communication with respect to the public powers not

located in the Autonomous Community of Catalonia, a condition that is exclusively held by the Spanish language (STC 82/1986 June, 26th, 1986, FJ 2). This territorial criterion is relevant when delimiting the public powers related to the consequences that are in principle inherent to the co-official nature of a regional language native to the seat of authority, not the territorial scope of the respective jurisdiction as this would by implication make all state bodies subject to the co-official nature of all regional languages in all areas of the nation which is a relationship that as a matter of principle is reserved to the only common language in Spain.

With regard to constitutional or jurisdictional bodies whose nature and relevance are exclusively at the national level, referred to in the provision examined here, it is also important to consider that independently of where their central offices are located and where they receive the power to act, their activities are exercised with reference not to a particular Autonomous Community but to the national territory as a whole. Consequently they cannot be included in this regulation for co-official languages.

However having decided that the right granted to the citizens of Catalonia is strictly "in accordance with the procedures established by the corresponding legislation" which indisputably will always be state legislation, with regard to the bodies referred to in the provision, section 5 of Article 33 of the Statute of Autonomy allows an interpretation that is in accordance with the Constitution, according to which that legislation must correspond not only to the modus for the exercise and enforcement of that right, but first define its content and scope in full. The competent State legislator must in this sense establish the existence or not and, as applicable, the degree of legal certainty of the documents presented in Catalan to those bodies, within the limits of the constitution (Article 3.1 CE).

Interpreted under these terms, Article 33.5 is not unconstitutional, and this will be so stated in the ruling.

24. Although the petitum includes Article 35 with no further specification, the censure, which as previously seen also extends to Article 6.1 of the Statute of Autonomy, paragraphs 1 and 2 of Article 35, still applies inasmuch as the three remaining paragraphs treat the two official languages in Catalonia identically.

Section 1 in effect recognizes the right to be taught in Catalan, the language which also "shall be used as the teaching and learning language for university and non-university education". Section 2 on the other hand guarantees, in the first part, the pupils' right "to receive an education in Catalan at the non-university level". Successive paragraphs treat Catalan and Spanish identically with regard to education and language, dissipating all questions of unconstitutionality with regard to the text of this second part of Article 35.2. The problem of constitutionality therefore resides in determining whether the expressions transcribed above necessarily deny the use of Spanish as a teaching and learning language.

The doctrine of this Court is that "the constitutional legitimacy of education in which the communication vehicle is the language of the Autonomous Community and co-official language in its territory together with Spanish" cannot be called into question (STC 137/1986, FJ 1), since this consequence derives from Article 3 CE and from the provisions of the respective Statute of Autonomy" (STC 337/1994 dated December 23rd, 1994, FJ 9). Nothing prevents the Statute in this sense from recognizing the right to be taught in Catalan, and for this to be the teaching and learning language at all levels of education. However there is nothing to prevent Spanish from being the object of an identical right enjoyed with Catalan as a teaching and learning language.

From the beginning we have discarded any claim for the exclusive use of one of the official languages in education. More specifically, we confirm in the article referred to in STC 337/1994, FJ 9, that "the content of the constitutional duty to know Spanish ... cannot generate an alleged right to be taught solely and exclusively in Spanish" because "as we have repeated in previous decisions (STC 87/1983, FJ 5; STC 88/1983, FJ 4 and STC 123/1988, FJ 6) there are consequences that derive from the nature of a regional language, as a co-official language, with

regard to its teaching". However on the other hand and having admitted the constitutional legitimacy of regional legislation regulating languages, we have noted that "the risk that provisions adopted by the Autonomous Communities could affect the use of the other co-official language, and in this way the regulation of the linguistic pluralism established by the Constitution and the respective Statutes of Autonomy must be admitted" (STC 337/1994, FJ 8), having affirmed very early that it is the responsibility of the State to see that linguistic rights are respected in the educational system, and in particular, "that of being taught in the official language of the State" (STC 6/1982 dated February 22nd, 1982, FJ 10), "as it cannot be forgotten that the constitutional duty to know Spanish (Article 3.1 CE) presupposes the satisfaction of the citizens' right to learn it through the teachings received in basic education" (STC 337/1994, FJ 10).

In addition "from the perspective of Article 27 CE it must be concluded that neither the content of the constitutional right to education recognized in that provision, nor its paragraphs 2, 5 and 7 in particular can take away from the right to be taught in just one of the two co-official languages of the Regional Territory, at the election of the subjects. The right of all to receive an education, we remember, is exercised within the framework of an education system in which the public powers —meaning the State through basic legislation and the Autonomous Communities within the framework of their competencies in this area— determine the curricula of the different levels, stages, cycles and grades, the minimum teaching and specific areas or subjects to be taught, and likewise organizing their development in the different educational centers. Consequently, in general terms, education constitutes a regulated activity. In this way the right to education guaranteed by the Constitution does not inherently mean that the public powers in this area could be conditioned by the free option of the subjects to the language of that teaching. And as a result the public powers - the State and the Autonomous Community are authorized to determine the use of the two co-official languages of an Autonomous Community as languages for communicating that teaching, according to the distribution of competencies in the sphere of education" (STC 337/1994, FJ 9).

In short the objective of the appropriate linguistic regulation of co-official languages is specifically harmonized in this sphere on the one hand with the right to education, and on the other with our doctrine that it is the competent public powers that must organize the education that will be given in one language or another in the different compulsory areas of knowledge at the different levels of education based on the objectives of linguistic regulation in Catalonia and on the objectives of that education, in order to achieve a certain result from these purposes, and in order to guarantee the right of citizens to receive an education, imparted in Catalan and in Spanish, during their basic studies at educational institutions in Catalonia. This right derives not just from Articles 3 and 27 CE but also from Article 3 of the Statute of Autonomy" (STC 337/1994, FJ 10). This statement, taken within the context of the question resolved in the above cited STC 337/1994, must be generalized here for the educational process as a whole.

From the above, we can infer that there is a necessary modulation of the right to a linguistic option in the area of education. Consequently and as we have repeated, it cannot be legitimately assumed that education is imparted solely and exclusively in one of the two co-official languages, as this would infringe the implicit constitutional mandate "on the public powers, both state and regional, to foment knowledge and to guarantee a mutual respect and the protection of both official languages in Catalonia" (STC 337/1994, FJ 9), more specifically as this would make teaching in the official language one of the consequences that is inherent precisely to that co-official nature (STC 87/1983 dated October 27th, 1983, FJ 5). Since both languages must be not just taught, but also a means of communication in the educational process as a whole, both co-official languages constitutionally must be recognized by the public powers as teaching and learning languages and therefore each individual has the right to be taught in either of them. Consequently it is perfectly legitimate for Catalan to be the center of gravity of this model of

bilingualism, in accordance with the objective of linguistic regulation", although always with the limit that this does not exclude Spanish as a language used for teaching, so that the knowledge and use of this language is guaranteed in the Autonomous Community" (STC 337/1994, FJ 10).

It is true that the text of Section 1 of Article 35 of the Statute of Autonomy omits any reference to Spanish as a teaching language; however its silence on a specific circumstance that must arise from the constitutional model of bilingualism, cannot be understood deliberately to order an exclusion, given that the statutory provision simply indicates the duty to use Catalan "as the teaching and learning language for university and non-university education", and not as the only language, therefore preventing —as it cannot— the equal use of Spanish. Consequently the second sentence of Article 35.1 is not unconstitutional, when it is interpreted in the sense that the mention of Catalan does not strip Spanish from its condition of a teaching and learning language. The simple recognition of a right to be taught in Catalan (first sentence of section 1 of Article 35 of the Statute of Autonomy of Catalonia) likewise cannot be interpreted to refer to an inadmissible legislative will for exception, so that the constitutionally admissible interpretation would lead to the existence of the right to an education given in Spanish. The same must be said of the first sentence of section 2 of Article 35.

Consequently section 1 in the first subsection of section 2 of Article 35 allows an interpretation in accordance with the Constitution, in the sense that it does not prevent the free and effective exercise of the right to receive an education in Spanish as the teaching and learning language.

Interpreted in these terms, Article 35, section 1 and the first subsection of section 2 are not contrary to the Constitution, and this will be so stated in the ruling.

30. The petitioners question the constitutionality of various provisions of Title II of the Statute, entitled "Institutions". The challenges refer to Chapters III, "The Government and the Administration of the Generalitat" (Articles 71.1 and 71.6), and V, "Other Institutions of the Generalitat" (Articles 76.1, 76.2, 76.4, 78.1, 80.1, 80.3, and 82) (Facts 33 to 37), as well as Chapter VI, "Local Government" (Articles 83.1, 84.2, 84.3, 86.5, 90 and 91) (Facts 38 to 41).

According to Article 71.1 the Generalitat is considered "the ordinary Administration in accordance with the provisions of this Statute of Autonomy and the law" and the sixth additional provision, which is challenged in connection to the above provision, establishes that "The Generalitat will become the ordinary Administration of the State in Catalonia as the executive functions performed by the Administration of the State through its territorial bodies in Catalonia are transferred to it, by means of the appropriate instruments." The petitioners consider that this power implies a movement of the General State Administration in Catalonia, preventing the exercise of the state competencies that should be carried out in that Autonomous Community.

The consideration of "the ordinary Administration" given to the Administration of the Generalitat in this provision, regardless of the meaning given to the term "ordinary Administration", be it the quantitative definition given by the State Solicitor, or the defense of principalism upheld by the representative of the Government of the Autonomous Community or the more technical definition of the Administration that performs executive functions for the State in the Autonomous Community which is echoed by the Members of the Parliament of Catalonia, in no way implies, as the petitioners declare, the exclusion of the peripheral State Administration in Catalonia, nor does it imply that this will continue in the Autonomous Community as an exceptional or marginal Administration. The condition challenged is simply a reflection, as provided in the same provision, of the position granted to the Administration of the Autonomous Community in the Statute of Autonomy and in the law. With regard to the point argued here, we must note that, according to Article 71.1, "he Administration of the Generalitat is the organisation that exercises the executive functions that this Statute of Autonomy attributes to the Generalitat." It is therefore qualified as an "ordinary Administration" and cannot statutorily translate into an assumption by the Government of the Autonomous Community of the executive competences that constitutionally correspond to the State in the Autonomous

Community, and therefore exclude it or marginalize it from the peripheral State Administration unless there is a preventive statement now on what the legislator may provide in the future.
Consequently the challenge to Article 71.1 of the Statute of Autonomy must be dismissed.
The sixth additional provision corroborates that the State Administration is not excluded or marginalized in the Autonomous Community, as it specifically looks at the possibility that the executive functions exercised by the State Administration through its territorial bodies in Catalonia are transferred to the Government of the Autonomous Community Administration. This is a view of the future which would have to be determined by the State, free of any conditions set by the Autonomous Community through the corresponding instruments and obviously subject to the limits set in the Constitution.
As a result the challenge to the sixth additional provision must be dismissed.
37. Articles 84.2 and 84.3 of the Statute of Autonomy are challenged because according to the petitioners both paragraphs would form a system designed to limit the power of the State to approve basic rules on local competencies, also granting competences to local bodies on matters that correspond exclusively to, or are shared with, the State such as those set forth in Article 84.2 e), h) and l).
Article 84.2 lists a series of matters over which local governments must have jurisdiction under the terms determined by law. Obviously as indicated by the State Solicitor, this statutory provision is addressed to the Parliament of Catalonia, and as a result it must be understood that the matters over which local governments in Catalonia must have jurisdiction according to the provision, are matters over which the Autonomous Community has assumed jurisdiction; i.e. matters with a regional jurisdiction. This being the case and without prejudice to what will be said with regard to the specific matters questioned by the petitioners, the indication that the provision prevents or removes the exercise of state jurisdiction in matters that are based in local codes under Article 149.1.18 CE must be dismissed, as it is the responsibility of the state legislator to set certain principles or “bases” concerning the institutional (organizational and functional) aspects and the local jurisdictions of the constitutionally necessary bodies (STC 214/1989 dated December 21st, 1989, FJ 1 and FJ 4). In other words, the sphere of jurisdiction provided by the Statute of Autonomy which must correspond to local governments in no way replaces or removes, but rather, as applicable, overlaps the principles or “bases” set down by the State on local jurisdictions in exercising the jurisdiction that is constitutionally reserved by Article 149.1.18 CE. The lack of an express mention in the provision on State competence under Article 149.1.18 CE does not stain that provision with unconstitutionality, nor can it in any way prevent the exercise of that State competence (Grounds 59 and 64).
The petitioners also question the inclusion of some of the matters enunciated in the provision, generically arguing that it deals with competences that are both exclusive and shared by the State, although the challenge is actually extended and used to specify the challenge to the items included in the abovementioned letters e), h) and l) of Article 84.2 of the Statute of Autonomy. The allegation referring to these specific matters will circumscribe our decision, since the generic and undetermined proposal lacks even the minimum reasoning that would accredit that the Autonomous Community has not assumed competencies over the remaining matters included in the provision or that the statement regarding the same exceeds the traditional competence of the Autonomous Community.
In view of the arguments commonly made regarding the matters included in letters e), h) and l) of Article 84.2 of the Statute of Autonomy which deal with matters that are the exclusive jurisdiction of the State, we must note that with regard to traffic [letter h)] pursuant to Organic Law 6/1997, dated December 15th, 1997, jurisdiction has been transferred to the Autonomous Community and this has assumed under the Statute of Autonomy competences that deal with traffic control and road safety (Article 164 of the Statute of Autonomy), and this has not been challenged by the petitioners.

Likewise in the area of telecommunications services and infrastructures [letter l)] the Autonomous Community has assumed competences (Articles 137.2 and 146.1 of the Statute of Autonomy) which, in the first case, involve jurisdictions that have not been challenged by the petitioners, while regarding the second they have admitted the possibility that the Autonomous Community assumes jurisdiction over the same, questioning only the specific scope with which it was done.

The action of unconstitutionality makes special mention of the authority granted to local governments to co-ordinate the different security forces and organizations present in the municipality [letter e)] through the Security Board, created through a State law which could likewise order its elimination. However the purpose or objective of the statutory provision is not related to the creation, composition or functions of the security Board, aspects regulated under Article 54 of the Law Enforcement Agencies Act (Organic Law 2/1986, dated March 13th, 1986); rather, it simply grants local governments the specific power to coordinate referred to in the title, through a Security Board in accordance with the configuration made by the state legislator. The provision obviously makes no link between the legislator and a possible suppression, alteration or modification of the body referred to in the exercise of the competences that it holds under the Constitution. Otherwise the Autonomous Community has assumed jurisdiction over public security, among other things, over the planning and regulation of the public security system of Catalonia, organization of the Autonomous Community's police force (Mossos d'Esquadra) and the coordination of local police forces (Article 164 of the Statute of Autonomy), and the petitioners have not challenged this title regarding jurisdiction in any of its facets.

Since the foundation of the challenge to Article 84.3 of the Statute of Autonomy was previously analyzed in the challenge made to Article 84.2, there can be no other ratio decidendi for deciding on it.

The provision reserves the distribution of the administrative responsibilities referred to in Article 84.2 among the different local Administrations, to the laws approved by Parliament. It is therefore evident, although it makes no reference to the state jurisdiction regarding the local government under Article 149.1.18 CE, that the regional legislator by approving the laws referred to must follow the basic legislation of the State regarding these matters, and in any event respect the State's jurisdiction.

Consequently the challenge to Articles 84.2 and 84.3 of the Statute of Autonomy must be dismissed.

40. As a question of principle it is necessary to point out that the Statute of Autonomy's failure to mention provinces, except in Article 91.4, cannot imply, in any way, the disappearance of this local entity in Catalonia. The province is an entity whose existence is assured by the Constitution, which defines it as "a local entity with its own legal personality, defined as a grouping of municipalities" and as a "territorial division for the fulfillment of the State's activities" (Article 141.2 CE). Neither of these concepts makes provinces in any way conditional on confirmation by Statutes of Autonomy, so this silence on the matter cannot represent an exception to the constitutional provisions on this point.

On the contrary, once the Statute of Autonomy has served its constitutional purpose as the basic institutional rule of the respective Autonomous Community, the omission noted can be explained to a large degree by the fact that the Catalan Statute of Autonomy has wanted to adhere to the discipline of the territorial organization in which the Government of the Autonomous Community of Catalonia is established, i.e. for the sole purpose actually available to it, since it lacks all jurisdiction to make pronouncements regarding the territorial organization of the State in that Autonomous Community. In other words, as inferred from Article 83, its purpose is "the organization of local government in Catalonia", never that of the State's local government in that territory.

With that purpose, the Catalan Statute of Autonomy has decided to structure the basic territorial organization of the Autonomous Community municipalities and districts called "Veguerías" (Article 83.1), and also using the "comarca" as a supra-municipal entity (Article 83.2) and foreseeing the possible creation of other autonomous supra-municipal entities (Article 83.3). What is important here is that the Statute of Autonomy has stated that the Veguerías should be "territorial division adopted by the Generalitat for the territorial organisation of its services" (Article 90.1), which does not affect the province as the "territorial division for the fulfillment of the State's activities" (Article 141.2 CE), as the provincial structure is neither the only criterion for territorial organization of public services as acknowledged, among other things, by the existence of local organization into comarcas contained in Article 83.2 and Article 92 of the Statute of Autonomy (not challenged in these proceedings), nor does the Statute of Autonomy's option of dividing the territory of Catalonia into Veguerías harm the State's territorial division into provinces; therefore, in Catalonia where the activities of the Central State do not have to follow any set divisional criterion other than the constitutionally mandated one of provinces.

On the other hand, the Statute of Autonomy's definition of Veguerías as "local government" (article 90.2) within the scope of intermunicipal cooperation (Article 90.1) corresponds to the constitutional definition of province as a "a local entity with its own legal personality, defined as a grouping of municipalities" (Article 141.2 CE); however, as in the case of Veguerías as a regional "territorial division", this organic dimension does not at all harm that of the province, since the constitutional guarantee of the province as a local entity does not exclude the existence of other supra-municipal government entities, apart of course from those that could jeopardize the existence and autonomy of the only thing constitutionally guaranteed in that regard.

Consequently, the challenge to Article 83.1 of the Statute of Autonomy should be dismissed upon the grounds of the introduction of the Veguería as a structural entity for the basic territorial organization of the Autonomous Community of Catalonia without mentioning the province, because the territorial division of the State into provinces, generally speaking, is not affected by this, nor, more particularly, is the division of Catalonia into the four provinces currently existing.

The unconstitutionality questioned in Articles 90.1 and 90.22 must therefore also be dismissed, as neither of the two dimensions defining the Veguería as a territorial division for intraregional purposes and as a local government entity for inter-municipal cooperation autonomously managing its own interests in any way damages the province as a territorial division of the State and as a local entity, nor the constitutional functions performed by it, namely those of electoral circumscription (Articles 68.2 and 69.2 CE), territorial division of the State to carry out its activities and as a local entity that is autonomous and has its own legal standing (Article 141.1 CE). The regulatory provisions regarding the existence of Veguerías, whatever their geographic boundaries may be, in this sense cannot represent the elimination of the provinces in Catalonia or that of their constitutional powers.

Interpreted in these terms, Article 90 of the Statute of Autonomy is not contrary to the Constitution, and this will be so stated in the ruling.

41. From the two provisions whose unconstitutionality was rejected above we can see, in their most immediate interpretation, that the Veguería is constituted as a local entity that, without prejudice to the province and its constitutionally guaranteed functions, concurs with the municipalities in structuring the basic territorial organization of the Catalan Government, also organized into "comarcas" and other supra-municipal bodies possibly created by the Autonomous Community; that is, as a local entity of the Generalitat and different from the province, with which it coexists with the autonomy guaranteed by the Constitution.

However, Article 91 of the Statute of Autonomy contradicts the above with a radically different alternative, and has moreover been the one that the parties have coincided in accepting as the

most suitable understanding of Veguería as an institution according to the Constitution. According to this provision, Veguería might not be a new local entity, but rather the new denomination of the province in Catalonia. This would in fact be a possible conclusion drawn from Article 91.3, according to which "the Council of the Veguería" (both bodies of "government and the autonomous administration of the Veguería": Article 91.1 of the Statute) "replace the provincial councils".

This possibility is not contrary to the Constitution, since the Veguería as provided for in the Statute of Autonomy comprises the typical elements of the province and this is, regardless of its specific denomination, the constitutionally guaranteed institution. Consequently nothing would oppose the denomination of the Catalan provinces as Veguerías, strictly for regional purposes. Just as nothing would prevent, in such a case, the Council of the Veguería replacing the Provincial Councils, since according to Article 141.2 CE the government and the autonomous administration of provinces must be entrusted to "Provincial Councils or other representative Corporations", such as "Councils of Veguerías" pursuant to Article 91.1 and 2 of the Statute of Autonomy. For "Councils of Veguerías" to replace Provincial Councils, the State legislation must determine their composition and the form in which its members are elected, as well as the basic state standards regulating their competencies in local arena.

Both interpretations therefore, in principle, fit within the Catalan Statute of Autonomy, so that it is the subsequent legislator who will finally determine whether the Veguería is a new local entity, or a new denomination for the province. Nevertheless each of these two possible interpretations, in each case, requires a particular understanding of Article 91 of the Statute of Autonomy; we must remember that the petitioners also hold that the initial subsection of Article 91.4 is unconstitutional, in its provisions that the creation, modification and suppression of Veguerías "is regulated by an Act of Parliament", which would be contrary to the provisions of Article 141.1 CE, according to which an Organic Law is required to modify provincial limits. The challenge here deals only with this aspect, without extending to the Parliament of Catalonia's regulation of the "implementation of the legal system of the Veguerías".

Now then, if the Veguería is no more than the denomination used for the province of Catalonia, there could be no constitutional objection of any kind to replacing the Provincial Council with the "Council of the Veguería", under the provisions of Article 91.3 of the Statute of Autonomy. However the "creation, modification, abolition, and also the implementation of the legal system of the Veguerías" could in no case be regulated by the Catalan Parliament as described in Article 91.4, since it is obvious that, as the Constitutionally guaranteed local body, the province denominated as a Veguería in Catalonia is not available to the Parliament of Catalonia, as under the terms of the same Article 91.4 of the Statute of Autonomy any change to provincial limits is reserved to an Organic Law, expressly referring to Article 141.1 CE. In this case this provision of Article 91.4 of the Statute of Autonomy must be interpreted to mean that when there is a geographic overlap between provinces and Veguerías, meaning when that institution has been created exclusively for regional purposes, or eliminated or suppressed, then this is the only option open to the Catalan Parliament, not the creation, modification or suppression of provinces, something that is in no case within the scope of the legislator of the Autonomous Community.

On the contrary, if the Veguería is a newly coined local entity then it would not be constitutional for the "Councils of Veguería" to replace the Provincial Councils. Consequently Article 91.3 of the Statute of Autonomy, to be constitutional, must be interpreted conditionally; that is, that the "Councils of Veguería" can replace the Provincial Councils exclusively in situations where the geographic boundaries of the "Veguerías" coincide with those of the provinces.

Interpreted in these terms, paragraphs 3 and 4 of Article 91 of the Statute of Autonomy are not contrary to the Constitution, and this will be so stated in the ruling.

42. Title III of the Statute of Autonomy of Catalonia, entitled “Judicial Power in Catalonia” and the object of various challenges, has been criticized by the petitioners based on the argument that the matter in question can only be regulated through the Judiciary Organic Law, and consequently not by the Statute of Autonomy which, in their opinion, in the case at hand would also violate the unity of the Judiciary through its undue localization. This general argument, presented in Fact 42, has been challenged by the other parties to these proceedings with the reasons also set forth in that Fact.

The appellants criticism on principle does not ultimately disqualify the existence of a Title in the Statute of Autonomy dedicated to the Judicial Power, as they expressly assume the repeated case-law of this Court that there are two material spheres with respect to the Judiciary, only one of which, the so called “administration of the Administration of Justice”, can be subject to the powers of the Autonomous Communities since the “Administration of Justice” in its own sense is the exclusive power of the State (see STC 56/1990 dated March 29th, 1990). The State Solicitor and the Catalan Parliament and Government based on this case-law their defense of the regulatory provisions appealed. As such the problem of constitutionality is not, in maximalist terms, whether the Statute of Autonomy can or cannot include provisions dedicated to the Judiciary, but more specifically whether the provisions appealed here are developed within the material sphere accessible to the Autonomous Community’s powers. It is likewise obvious that the parties also specifically disagree on the exact delimitation of that sphere as opposed to the area reserved to the jurisdiction of the State.

It is therefore appropriate to examine each of the provisions appealed to determine whether, as the petitioners maintain, the new Catalan Statute of Autonomy has been extended to cover matters that are reserved to the State’s jurisdiction. This study evidently can only stem from the principle that one of the characteristics defining the “State of the Autonomies” in contrast with the Federal State, is that its functional and fundamental difference does not in any event reach jurisdiction. The diversification of the Legal Systems of a State of the Autonomies in a plurality of autonomous regional systems is not confirmed at the level of constitutionality with the existence of a plurality of Constitutions; on the contrary, based on a single national Constitution, it begins only at the level of legality. Regulatory systems configured on that point produce their own inherent standards based on the exercise of legislative and executive powers that are also inherent. Nevertheless, the jurisdictional function through which those standards take form and content is always, and only, a function of the State. Therefore, if the “State of the Autonomies” is born with a single Constitution, then it concludes with a single jurisdiction, containing the diversity of bodies and functions in the different phases of the regulatory process occurring between the two points. The unity of jurisdiction and the Judiciary, within the sphere of the legal system, is therefore equivalent to the unity of the will to constitute it at the level of abstraction.

The territorial structure of the State is in principle unessential for the Judiciary as a Branch of the State. The Constitution limits the relevance of the principle of territorial jurisdiction to very specific terms. This makes the territory of the Autonomous Community one of the key units for articulating Judiciary in the nation as a whole. As a result it is valid as a criterion for the territorial organization of the jurisdictional bodies and procedural instances, but has no impact of any kind on their integration in the State Branch. This fundamental and functional unity, substantially assured with the State’s power of exclusive jurisdiction over the Administration of Justice, is perfectly compatible with the recognition to the Autonomous Communities of certain powers within the sphere of the “administration of the Administration of Justice”, when this stems from their jurisdiction over the strictly administrative competences guiding the jurisdictional function of the State.

This characterization, which merely scratches the surface of the State of the Autonomies, is more specifically constitutionally founded on Article 152.1 CE, whose second paragraph in conjunction with the provisions of Title VI and Article 149.1.5, both of the Constitution, lay out

the dimension of the jurisdiction of the Autonomous Communities in a negative sense: while Autonomous Communities must always have their own Government and in certain situations, today generalized in all Autonomous Communities, also a Legislative Assembly, they cannot under any circumstances have their own Courts. Rather their area must be used to define the territorial jurisdiction of a High Court of Justice which must not be that of the Autonomous Community, but rather that of the State within this territory. That territorial area will also define the organization of procedural instances, which shall be complete in that territory so that it culminates in the national instance of the Supreme Court. The Statutes of Autonomy cannot regulate these principles (much less those that deal with jurisdiction and its exercise or with the judicial bodies), as Statutes of Autonomy, pursuant to Article 152.1 CE, can only establish "the conditions and forms of participation of [the Autonomous Communities] in organizing the judicial boundaries of the territory", understanding that organization as a state jurisdiction.

47. Chapter II of Title III of the Statute of Autonomy is dedicated to the Council of Justice of Catalonia. The considerations alleged by the parties with regard to the provisions challenged in this respect, i.e. Articles 97, 98.1, 98.2 and 99.1 of the Statute of Autonomy are summarized in Fact 45, in which the appellants challenge the violation of matters reserved to the legislator of Organic Laws in Article 122.2 CE and to the State in Article 149.1.5 CE. Those challenges have been answered by the other parties to the proceedings, emphasizing the exceptions contemplated in the Statute of Autonomy in favor of the domain of the Judiciary Organic Law.

Given the constitutional configuration of the Judiciary referred to by us in the preceding Grounds, it is obvious that the Catalan Statute has incurred in an excess by creating in Article 97, a Council of Justice of Catalonia which is qualified as the "body governing judicial power in Catalonia", that acts "as a decentralized body of the General Council of Judicial Power". As a result, the Judicial Power (which is organized and functions on the basis of the principle of unity pursuant to Article 117.5 CE) cannot have a greater body of government than the General Council of the Judicial Power, whose regimen and functions are expressly reserved to the Organic Law established in Article 122.2 CE. Under these conditions, the violation of Articles 122.2 CE and 149.1.5 CE are obvious since it is repeated doctrine (see STC 253/2005 dated October 11th, 2005, FJ 5), that nobody, except the General Council of the Judicial Power, can exercise the function of government for the jurisdictional bodies forming part of the Judiciary, an exclusive function of the State. Nor can any other law other than the Judiciary Organic Law determine the structure and functions of that Council, allowing with regard to the point of interest here and, where applicable, possible formulas for decentralization whose existence and configuration, given that they are not constitutionally essential, must be left to the free decision of the Organic Law with the constitutional limits previously described.

Now then, the constitutional impropriety of a regional body qualified under the terms of Article 97 of the Statute of Autonomy does by definition translate into the unconstitutionality of that body, as the unconstitutionality and nullity of a body that existed only to exercise some constitutionally unacceptable tasks would be inevitable only if each and every one of its specific powers corresponded to that qualification as improper. Article 97 is therefore unconstitutional inasmuch as it qualifies the Council of Justice of Catalonia as the "body governing judicial power" that "acts as a decentralized body of the General Council of the Judicial Power". The survival of the Council of Justice of Catalonia, after excluding its unconstitutional foundation, will depend on the opinion merited by the powers granted it in Article 98 of the Statute of Autonomy.

In any event, the unconstitutionality first noted in Article 97 must, by connection or as a consequence, imply that of Articles 98.3 and 100.1 of the Statute of Autonomy, not challenged, the first because of the possibility that the Council of Justice can hand down resolutions on appointments, authorizations, leaves and absences for Judges, and because the ability to appeal against certain acts of the Council of Justice of Catalonia to the General Council of the Judicial Power is logically a result of its definition as a decentralized body of the latter.

Consequently, Article 97 of the Statute of Autonomy, as well as section 3 of Article 98 and section 1 of Article 100, are unconstitutional and null and void.

57. A primary qualitative limitation on the possible content of a Statute of Autonomy is that this type of rule is not called on to define constitutional categories. This limitation actually is what justifies the nature of the Statute of Autonomy as a rule that is subordinate to the Constitution, and that ultimately defines the institutional position of the Constitutional Court as the supreme interpreter of the Constitution. These categories include the concept, content and scope of the regulatory functions whose ordering, attribution and discipline are set forth in the Constitution as the creator of a legally regulated procedure for the exercise of public power. To legislate, administer, execute or judge; whatever the terms of the relations between the different regulatory functions and the acts and provisions exercised by them; the content of the rights, duties and powers granted and regulated by the Constitution; these are all questions that as they constitute the language in which the drafter of the Constitution's will must be understood, can have no other place than the formal Constitution, or any meaning other than that prescribed by the supreme interpreter (Article 1.1 of the Organic Law on the Constitutional Court).

The Statutes, which specifically distribute the competences between the State and the Autonomous Communities, are rules set by the Constitution to assign the jurisdiction of the respective Autonomous Communities within the framework of the Constitution. This therefore assumes not just that other competences cannot be assigned except those whose distribution by a Statute of Autonomy is allowed by the Constitution; but also that jurisdiction in itself can imply the powers determined by the Constitution. The Statute can attribute a legislative competence to a particular matter, but the meaning of "competency" and what legislative powers are included thereunder as opposed to the competency regarding its execution are elements that define the very system of which the Legal system is made, and therefore are reserved to the first Rule constituting it. In short this is none other than the profound difference between the constituent power and the constituted power previously noted in STC 76/1983 dated August 5th, 1983. The decentralization of the Legal System is in principle limited by the need for the competences that fall to the Central State, which cannot be the same in relation to each of the Autonomous Communities because of the different jurisdictional powers confirmed in the different Statutes of Autonomy, to consist of identical powers projected over the same material realities where they effectively correspond to the State unless this were to end up reduced to impotence in the event of a need to arbitrate for each Autonomous Community not just different competences, but the different manners of being competent.

The Constitutional Court, as the supreme interpreter of the Constitution, is the only body with jurisdiction to determine the authentic —and indisputable— definition of the constitutional principles and categories. No other infra-constitutional rule, due to their very nature, can act as an extended or newly arisen constituent power by formalizing one of the various meanings that could allow a constitutional category. That task corresponds exclusively to the Constitutional Court and is likewise, always, an elemental principle of constitutional guarantee and defense: the principle that, in the event of a violation and in the lack of any express reform, allows the meaning to be adapted to that period in history.

58. This is of the utmost importance for the appropriate presentation of one of the capital questions raised by the new Catalan Statute of Autonomy. The defense of its constitutionality is often founded on the fact that many of the solutions adopted by it regarding the distribution of competences and, above all, on the meaning and scope of the competences themselves and the matters subject to it, accord perfectly with the decisions entered by the Constitutional Court in almost thirty years of case law. The fact that the Statute of Autonomy effectively allows these solutions —which in the opinion of the Catalan Parliament and Government would have had their natural source in the Constitution or, where necessary, the Statutes of Autonomy, but not case-law even though historic circumstances have made the recourse to the latter legal resource

necessary, in their opinion, truly extravagant—, does not, however, resolves the challenges presented against its constitutionality since, in light of the above, the censure that it actually deserves would not be that of ignoring the competences of the State, so much as appropriating for itself the function of the Constitutional Court, which it would have been sure to respect in accordance with the sense of its jurisprudence, but forgetting that the formalization of the regulatory substance as a will of the legislator, removes from it the inherent condition that is the result of the exercise of jurisdictional function reserved to this Court as supreme interpreter of constitutional rules.

Articles 110, 111 and 112 of the Statute of Autonomy do not intend to discipline a matter that is not subject to the legislator, constituted as the definition of what are the legislative, regulatory and executive powers contained within the competences that may be held by the Autonomous Community of Catalonia. These powers shall always and only be those that derive from the interpretation of the Constitution which are reserved to this Court, and unless there is a timely reform of the Constitution, its content and scope shall only be those that may result from the evolution of this case-law.

Despite this, the very lack of definition in the text of the Constitution on this point, together with the inevitable dispersion of decisive constitutional criteria that have over three decades formed a body of doctrine, has led to a certain degree of uncertainty regarding the formal identification of the categories and principles regarding the territorial distribution of powers in the State, as configured and defined by our case-law. Although various of these were challenged during that period by a jurisdictional definition that is perfectly complete in its substantive content and that made it possible to reduce them to a unity through their organization as a legal system, it is no less true that the formal expression of the result suffers from the characteristic failings of all works of jurisprudence, in terms of their distinction and acknowledgement by the community of those to whom it is addressed and who are subject to it. Under these circumstances, the Statutes of Autonomy may still relate, albeit without defining them, for purposes of the orderly and systematic display of the set of powers, those authorities and functions that in accordance with constitutional case-law comprise the functional content of the competencies assumed by the Autonomous Communities in their basic institutional rule, i.e., for no other purpose than to describe a regulatory reality that is in itself unavailable. This has been done by various Statutes of Autonomy since their approval for the powers contained in the competencies granted, within the framework of the Constitution, to the respective Autonomous Communities.

This is ultimately the meaning to be given to the provisions set forth in Articles 110, 111 and 112 of the Statute of Autonomy of Catalonia, which are constitutionally acceptable inasmuch as they conform, with the descriptive and systemic desire referred to above, to the regulatory and dogmatic construction which can be inferred from our jurisprudence at different moments in history; that is, without its formalization as the expression of the will of the legislator of the Organic Law drafting the Statute of Autonomy implying any change in its regulatory quality, which will always be, barring an express reform of the Constitution, that inherent to the exercise of our jurisdiction. In other words, it shall not in any way deprive this Court of its power to modify or review in future the doctrine now formalized in the provisions examined.

59. In accordance with Article 110.1 of the Statute of Autonomy, “the Generalitat has exclusive power, legislative power, regulatory power and the executive function correspond fully to the Generalitat”, subsequently the provision states that “the exercise of these powers and functions, by means of which it may establish its own policies, is the exclusive right of the Generalitat.”

No objections can be made to a provision that limits itself to describing the exercise of legislative and regulatory powers, as well as the executive power, as these are inherent to the title of exclusive jurisdictions; because, being an autonomous public power in accordance with the Constitution, it becomes evident that, while respecting the limits of the State’s reserved

jurisdiction, Autonomous Communities can have the sole title of all the regulatory powers and acts of execution related to the discipline and regulation of all matters within their exclusive jurisdiction. In other words, given the constitutional plausibility of the Autonomous Communities' assumption of exclusive powers over specific matters, or exclusive to different material sectors of the same reality, it is constitutionally necessary for Autonomous Communities to be attributed the exercise of as many powers and authorities as are included in the regulatory treatment of the matter, or in the material sectors over which this jurisdiction is applied and exercised.

The aforesaid is in fact so evident, and so in accordance with our most renowned legal thinking that, as the State Solicitor puts forward, only a specific interpretation of the meaning of the provision could ascribe a constitutionally unacceptable sense to it. Consequently, taking the expression "exclusive right" as a starting point, it could be inferred that the Statute wrongly abstracts the possibility that exclusive jurisdictions of the Autonomous Community be exercised over sectors of the reality in which the State also has exclusive jurisdiction. This concurrence is always solved, in the case of this particular Statute of Autonomy, on the side of the Autonomous Community. However, even if Article 110.1 refers strictly to the functional-normative dimension of exclusive jurisdictions, without mentioning its potential material object, there is no reason to conclude that the Statute is inevitably based on the principle that exclusive jurisdictions are exercised over matters, rather than over sectors of a matter in which State exclusive jurisdictions may also be exercised. It is evident, from Article 149.1 CE that normative powers over a same matter can be attributed to different holders. In this way, the exclusivity of a jurisdiction is not always coextensive with a matter. Sometimes, the specific power or function is attributed to a certain holder over the totality, or over part of the matter. It is indeed assumed in this way, as we will next examine, by Articles 111 and 112 of the Statute of Autonomy.

Certainly, Article 110.1 of the Statute of Autonomy only makes reference to the case of coextension of jurisdiction and subject in toto, but this does not imply the exclusion of an eventuality —constitutionally envisaged and, thus legislatively unavailable— from an exclusive jurisdiction only referred to normative powers that could be exercised over a sector of the reality in which State exclusive powers also come together. This being the case, the provision examined does not deserve the censorship of unconstitutionality. All this notwithstanding the fact that, by examining the articles that attribute certain competences, we shall verify that the limit of the State's exclusive jurisdiction is respected in each case; whether they refer to a matter's integrity, or to the powers over sectors of a matter in which autonomous jurisdictions come together; and provided that the expression "in all cases", included in provisions of the Statute, will not represent an obstacle for the projection of the State's jurisdiction on this matter.

The second part of Article 110 states that "in matters regarding the exclusive power of the Generalitat, Catalan law is applicable in its territory and shall prevail on any others." Despite its formal challenge, the provision has not come in for a lot of criticism in the writ of appeal, apart from the criticism it could generically deserve, as it refers to a discipline of a constitutional category, namely the system of organization within the limits of different normative systems included in the framework of the Constitution. This objection could be valid for this particular case and, specially, this "preference" for Catalan law for matters under the Government of the Autonomous Community's exclusive jurisdiction does not hinder the application of State Law derived from concurrent jurisdiction. This being said, the sense of the provision easily fits with Article 149.3 CE, whose prevalence- and supplementary- clauses are not discredited by the rule in question.

All things considered, Article 110 of the Statute of Autonomy is not contrary to the Constitution, because it is applicable to suppositions of full jurisdiction in the Autonomous Community; and given the fact that it does not hinder the exercise of the State's exclusive jurisdictions under Article 149.1 CE; whether these come together with autonomous jurisdictions over the same

physical space or judicial element; or regarding shared jurisdiction, notwithstanding the use of the terms “exclusive jurisdiction”, or “exclusive jurisdictions” in the other provisions of the Statute; and notwithstanding that the expression “in all cases”, repeatedly mentioned in the Statute with regard to regional jurisdictional settings, has no other legal value than a merely descriptive one, nor does it hinder, on its own, the full and effective exercise of the State’s jurisdictions.

Interpreted in these terms, Article 110 is not unconstitutional, and this will be so stated in the ruling.

60. Article 111 establishes that “in matters in which the Statute of Autonomy attributes powers to the Generalitat which are shared with the State, legislative power, regulatory power and the executive function are the responsibility of the Generalitat, within the framework of the basic conditions established by the State as principles or lowest common legislative denominators in rules of legal rank, with the exception of those circumstances determined by the Constitution and this Statute of Autonomy. The Generalitat may establish its own policies in the exercise of these powers. Parliament shall implement and specify said basic provisions by means of a law.”

The provision that the State and Autonomous Communities can share a certain material framework in the exercise of different powers and functions is one of the main characteristics of the territorial model of a State of the Autonomies. The concurrence of these powers and functions over the same subject matter is regulated in the Constitution, in terms of the principle; whether attributing the legislative power to the Central State, or attributing executive jurisdictions to Autonomous Communities; or giving the State the authority to establish basic regulations, and giving Autonomous Communities the possibility to develop those “bases” through legislation and the title of the corresponding regulatory and executive powers over the developed legality. Articles 111 and 112 of the Statute of Autonomy strictly obey this model, describing in the first provision the supposition of concurrent jurisdictions arbitrated in accordance with the “bases”/development criterion. Therefore, no objections can be made to Article 111 of the Statute of Autonomy with regard to that point.

However, the provision does not strictly obey the constitutional concept of State bases, since it reduces them to the “principles or lowest common legislative denominators” passed by the State “in rules of legal rank”. The truth is that, in accordance with our precedents, as the content that best fits with the structural and homogenizing function of the bases and this being the normative way that turns out to be most judicious in terms of stability and certainty (for all of them, STC 69/1988 dated April 19th, 1988), it is not less than possible to preach the basic character of regulatory regulations and the State’s acts of execution (STC 235/1999 dated December 16th, 1999), and they are feasible on the basis of a different scope in accordance with the function of the subject matter or sector on which they are executed, and even over the territory (STC 50/1990 dated April 6th, 1990, and STC 147/1991, dated July 4th, 1991, respectively). This shall not be understood as the only exception to the criterion that constitutes the basic rule for Article 111, but as defining elements of the content and scope of the competency attributed to the State when this holds the power to pronounce the bases of discipline in a certain matter.

Therefore, Article 111 does not abide by the duty of systematization of constitutional regime categories for the distribution of the powers it can fulfill, as we have repeatedly stated, but defines the State’s jurisdiction by giving one of the variables admitted by this Court the character of an essential rule in the definition of the concept of “bases”. Whether the bases are “principles” or “lowest common legislative denominators” is not a question to be clarified in a Statute of Autonomy, but only in the Constitution, that is: within the legal philosophy expounded by this examining Court. This is, above all, due to conceptual reasons. However, apart from that, it is determined by structural and practical reasons. On the one hand, because concept, content and scope of the bases cannot, as a general rule, be different for each Autonomous Community,

since the State should dictate one or other type of regulation in accordance with each Statute of Autonomy. On the other hand because, as the bases are mutable (STC 1/2003 dated January 16th, 2003), the scope available for developing legislations is also inevitably mutable, in such a way that the legal rigidity of a Statute of Autonomy turns it into an inappropriate rule to determine in detail the powers inherent to that legislation.

As a consequence, the subsection "as principles or lowest common legislative denominators in rules of legal rank, with the exception of those circumstances determined by the Constitution and this Statute of Autonomy", is unconstitutional, and therefore null and void. With its elimination, Article 111 limits itself to correctly describing the powers described in the power for developing some State bases, the content and scope of which will always and only be those included in the Constitution as interpreted by this Court.

61. Article 112 of the Statute of Autonomy establishes that, "in matters in which the Generalitat has executive powers", the Autonomous Community enjoys "regulatory power, which includes the power to approve provisions for execution of State rules, and also the executive function, which in all cases includes the power to establish its own administration and, in general, all the functions and activities that the system attributes to the Public Administration." The challenge is centered in the subsection "regulatory power, which includes the power to approve provisions for execution of State rules", thus alleging that this subsection denies, in accordance with our judicial precedents, that the State's legislative jurisdiction can involve, in some cases, the exercise of regulatory jurisdiction, as a material concept of the legislation.

The provision examined in the aforementioned subsection is not contrary to the constitutional legal philosophy that has traditionally included the concept of "legislation", when speaking about the State, in the executive power to regulate (STC 196/1997 dated November 13th, 1997) since, when referring to "State rules" adopted in exercise of the regulatory power are naturally included, apart from the rules resulting from the State's legislative power. It is different when the executive jurisdiction of the Autonomous Community can be exercised, on the basis of "the (legal and statutory) State rules" not only as executive function sensu stricto, but also as general regulatory power. The answer is, in accordance with our legal philosophy, clearly negative, even in the case that the executive framework involves a regulatory jurisdiction of functional character from which are derived internal regulations to organize the necessary services for the execution and regulations of its own functional jurisdiction of execution and the set of precise action to put State regulation into practice (STC 51/2006 dated February 16th, 2006, FJ 4). Only understood from that specific dimension, does the regulatory power referred to in Article 112, limited to the issuance of regulations regarding internal organization and functional order of autonomous executive jurisdiction, not affect the constitutionality of Article 112.

Interpreted in these terms, Article 112 of the Statute of Autonomy is not contrary to the Constitution, and this will be so stated in the ruling.

64. The provisions included in Chapter II, Title IV of the Statute, under the heading of "Matters of power", give a detailed description of matters that, according to the action of unconstitutionality, infringe Articles 147.2 d), 149.1 and 149.3 CE in the aforementioned terms and set out in Facts 52 to 55 and, for each of the provisions challenged, in Facts 58 to 101.

Nothing in Article 147.2 d) CE is in opposition to the fact that a Statute of Autonomy, as described and mentioned in Article 110, 111 and 112 of the Catalan Statute of Autonomy, may use a descriptive technique for matters over which the Autonomous Community always assumes jurisdiction, obviously within the Constitution frame and respecting the limit of powers reserved for the State under Article 149.1 CE.

When questioning the challenged articles which attribute specific jurisdictions, we have to verify whether, in effect, the State's reserved exclusive jurisdictions are respected, regardless of whether they refer to a matter as a whole or to certain matters making up a particular material sector; after establishing that the reality, content, and scope of these, over which jurisdiction is

exercised, and the jurisdiction itself, will always stem from the interpretation that this Constitutional Court gives to the Constitution; inevitably and necessarily corresponding to the interpretation of the Articles 110, 111, and 112 of the Statute of Autonomy given above.

Article 149.1 CE states that the attribution by the Statute of Autonomy of exclusive competences to the Government of the Autonomous Community on a matter in terms of Article 110 of the Statute cannot affect such competences (or powers or functions within the same) on matters or sub-matters reserved only to the State (we have already said that the exclusivity of a competence is not always coextensive with a subject matter) and will be projected, whenever corresponding, over such exclusive autonomous competencies with the scope given by the State legislator with full freedom of configuration, without having the need of the Statute of Autonomy to include force majeure provisions regarding state competencies. Furthermore, the attribution to the Catalan Government under the Statute of Autonomy of powers shared with the State according to the "bases"/development criterion (Article 111 of the Statute of Autonomy of Catalonia) will not prevent the state "bases" from shaping the different matters of the same material sector with full freedom, and where the exclusivity regarding such matters eventually claimed by the Statute shall be inappropriate, without severing or infringing the State's exclusive jurisdiction projection on the bases of such matters. Finally, it is obvious that the attribution of powers to execute to the Government of the Autonomous Community may neither prevent the complete deployment of the regulatory, legislative, and regulatory powers of the State (Article 112).

Regarding the technique followed on occasions by the Statute for attributing subject matter jurisdiction to the Government of the Autonomous Community projected "in any case" regarding the corresponding submatters, we have already stated (Ground 59) that this expression shall be understood merely in a descriptive or indicative way as such matters make up the content of the material reality in question but without the State jurisdictions, whether or not they are concurrent or shared with those of the Autonomous Community, resulting affected or limited in their exercise by this attribution "in any case" of specific jurisdictions to the Catalan Government under the Statute. This is how this expression, present in certain provisions challenged, shall be understood (Articles 117.1; 118.1 and 2; 120.1, 2 and 3; 121.1 and 2; 123; 125.1 and 4; 127.1 and 2; 131.3; 132.1; 133.1 and 4; 135.1; 139.1; 140.5 and 7; 147.1; 149.3; 151; 152.4; 154.2; 155.1; 166.1, 2 and 3; 170.1 and 172.2). This will render it unnecessary for us to go over this subject when analyzing each one.

Before going over the specific provisions of Chapter II of Title IV of the Statute that have been subject to challenge, it is necessary to point out that our judgment will fall on the constitutional correctness of the terms in which the Statute has fulfilled its purpose as a basic institutional rule in which the Constitution trusts the attribution of powers to the Autonomous Community of Catalonia. These terms, due to what we have just stated, can only be interpreted, notwithstanding the literal expression of statutory provisions, within the limits of our legal philosophy and in the sense acquired over the last thirty years by the categories and constitutional concepts on which they are based and on which the regime for distribution of powers characteristic of the State of the Autonomies is developed.

Therefore, we shall base ourselves on the strictly necessary jurisdictional ruling, without giving too many details of a jurisdiction distribution model which, notwithstanding the high level of definition in the Statute, requires the application and development of a regulation that does not yet exist. It is true that, when judging the statutory provisions we will be also pointing out, at the same time and necessarily, certain limits to which such developmental regulation shall be held. Those limits cannot be specified in this moment but, in any case, for the judgment of constitutionality which may be demanded from us in the future regarding this developmental regulation and when paying attention to the whole dimension of each jurisdictional controversy,

it will be expected from us to give the most precise and perfect delimitation of the jurisdictional outlines that may be in dispute.

110. The challenged Title V of the Statute of Autonomy has as its objects the institutional relations of the Government of Catalonia with the State, with other Autonomous Communities (Chapter I) and with the European Union (Chapter II). The third chapter is destined to the foreign action of Catalonian Government. Fact 102 sums up the general considerations raised by the parties in relation to the principle of bilateralism, which for the appellants represents the corollary of the unique position which, in their opinion, the Statute of Autonomy attributes to the Catalan Government in the State as a whole. Such considerations include the arguments developed by the parties as a result of the challenge to Article 3.1, summarized in Fact 20 of this judgment.

When pronouncing ourselves upon the constitutionality of Article 3.1 of the Statute of Autonomy we have already pointed out that its challenge was the result of a principle, the petitioners understanding that in this provision we find the basis of a model for the relationship between the Autonomous Community and the State which, in their opinion, situates them both in a position of equality. Such an approach has been ruled out together with the interpretation which led us to reject, in Ground 13, the unconstitutionality of Article 3.1, a provision which states that the relations of the Autonomous Community with the State are based on a group of principles that cannot be constitutionally objected to. Therefore, the principle which states that "the Generalitat is State", is an affirmation which is beyond discussion because the State, in its broadest sense, referring to the Spanish State set up in the Constitution, embraces all the Autonomous Communities into which the State is territorially organized (for all pertinent judgments, STC 12/1985 dated January 30th, 1985, FJ 3) and not only to the so called "Central State", with which the Spanish State should not be confused but instead should be included within it to make up, together with the rest of the Autonomous Communities and local bodies, the State altogether. As we have already explained, the ambiguity of the term "State" lies in the misunderstanding resulting from Article 3.1, as it is clear that the relations between the Autonomous Community and the same State with which it is identified and integrated as a necessary and constituent element of it do not fit in with the principle that "the Generalitat is State", but instead the State referred to is only the so-called "Central State". Article 3.1 of the Statute of Autonomy, acquires, in short, an exact meaning as a provision referring to the relations between two parts of the Spanish State: the Catalan Government and the central institutions of the State.

Having said this, and starting from the fact that the Statute of Autonomy, as the basic institutional rule of the Autonomous Community of Catalonia passed by means of an Organic Law, is not an inappropriate set of rules for the proclamation of the principles that, like the principle of co-operation, shall inspire the system for that relationship between the Central State and the institutions inherent to the Autonomous Community of Catalonia. However, it must also be stated that, beyond such principles, the real organization of the rules for this system shall respond to the structural constitutional requirements which can obviously only be inferred from the Constitution and, consequently, from the jurisdiction interpreting it. Therefore, once the unconstitutionality of the Article 3.1 of the Statute of Autonomy is precluded, by virtue of the reasons and the understanding expressed (Ground 13), as the principal rule defining the relationship model between the Central State and Catalonia, later articulated in the Statute, we shall now examine the constitutionality of the provisions stated in the Statute of Autonomy for the specific regulatory articulation of that model.

113. Petitioners claim that Article 180 of the Statute of Autonomy enforces a regulatory minimum on State legislation, the only one competent to decide, by anticipating the participation of the Autonomous Community in the processes for designating Judges of the Constitutional Court and members of the General Council of the Judicial Power. The debate is

focused on determining if it is possible for a Statute of Autonomy to include a regulation such as the one challenged, referring to two constitutional bodies whose discipline is reserved, in both cases, to an Organic Law based on the Constitution (Articles 122.2 and 165 CE, respectively).

The provision would be clearly unconstitutional if it were interpreted in accordance with the terms established in the complaint, i.e. if the participation of the Autonomous Community in the designation processes referred to prescribed, without leaving room for the Organic laws involved (Organic Law of the Constitutional Court and Judiciary Organic Law) other than for the detail in which this participation is to take place. However, there could be another interpretation, maintained by other parties to the dispute, under which the provision would express an intention of the Government of the Autonomous Community to collaborate in processes that, albeit beyond its jurisdiction, refer to institutions that, by reason of their constitutional functions in the structure of the State, are of particular interest for the Autonomous Communities as parts making up the State.

Literally the principle examined includes, of course, the interpretation given by the petitioners. But it does not exclude the alternative defended by the other parties, perfectly compatible with the Constitution as long as, on the one hand, it does not affect the freedom of the state legislator to give or not to give effect to the wish for participation expressed in Article 180 of the Statute of Autonomy; and, on the other hand, does not harm the power of the State to formulate the way in which, should the case arise, such participation is included in the processes for designating the members of the said constitutional bodies. In contrast, such participation is already constitutionally assured indirectly by means of the designation power given in Articles 122.3 and 159.1 CE to the Senate, House for territorial representation in whose composition Autonomous Communities participate directly (Article 69.5 CE) and in which their legitimate interest in the regular functioning of the State bodies they belong to finds a perfect institutional fit. Furthermore, this participation, based on respect for the constitutional prescriptions on this subject, has been indicated for this case of this Court by a freely adopted decision by the competent State legislator in Organic Law 6 dated May 24, 2007, which amended the Organic Law of this Constitutional Court.

In conclusion, Article 180 does not infringe the Constitution interpreted in the sense that the participation of the Catalan Government is conditional, in its existence and procedures, on what is established, within the framework permitted by the Constitution and the corresponding organic laws.

Interpreted in these terms, Article 180 is not contrary to the Constitution, and this will be so stated in the ruling.

114. Based on a very similar argument, the petitioners challenge sections 1, 2 and 3 of Article 182 of the Statute of Autonomy. These provisions contemplate the participation of the Autonomous Community in several organizations of different nature, establishing that participation in the designation of its members on the terms established by the applicable legislation. The common characteristic of all the organizations or entities mentioned in these sections is that they are integrated in the State organization or somehow depend or are related to the State Administration.

It is clear that the legislation applicable for each of the sections of this provision cannot be other than state legislation, because the bodies and organizations to which the provision refers belong to the state and by virtue of this, it corresponds to the State to make or not to make effective, in each case, with complete freedom, the participation indicated, its specific scope and the specific form of organization, here having to go back to what has already been stated in Groun 111, in which we have stated that such participation is not appropriate regarding State Bodies with decisive nature. This being the case, the participation authorized for the Catalan Government under Article 182 cannot be reproached as unconstitutional with regard to state organizations and bodies that, due to their functions and possible effects on the powers of the Autonomous

Communities, are of special interest to them. Furthermore, the generality of the provision, which enables a wide variety and diversity of modalities of development, does not allow us to prejudge its contravention of the Constitution.

In this understanding as set out above, the challenge to Article 182 of the Statute of Autonomy must be rejected

115. Article 183, which deals with "Functions and composition of the Generalitat-State Bilateral Commission", is challenged for being the procedural embodiment of the principle of bilateralism, argued in the challenge to Article 3.1, also because among its powers it considers matters, activities or sectors whose discipline must be established by State level legislation. The Generalitat-State Bilateral Commission is defined in section 1 of Article 183 of the Statute of Autonomy, according to the principles established in Articles 3.1 and 174, as "the general and permanent framework for relations between the Government of the Generalitat and the Government of the State" as specified in points a) and b) of the said section, namely: "a) Participation and collaboration of the Generalitat in the exercise of State powers affecting the autonomy of Catalonia" and "b) Exchange of information and establishment, when appropriate, of mechanisms for collaboration in their respective public policies and in matters of common interest." Point b) has not been challenged in this action of unconstitutionality.

From the literal meaning of Article 183.1 it can be clearly seen that, as was anticipated when examining the constitutionality of Article 3.1 of the Statute of Autonomy, this bilateralism, among others, as a structuring principle for "the relationship of the Generalitat with the State" (Article 3.1), can only refer to those relations between the Autonomous Community of Catalonia and the Central State, this is, between two constitutive elements of the Spanish State, which involves both and all the other Communities (as well as the municipalities and provinces) in which the State as a whole is territorially organized. The normative embodiment of that principle is now verified in a provision limited to build an organic structure, the Bilateral Commission, defined as a framework for the relationship between the Government of the Autonomous Community and the State Government, never between the Spanish State and the Autonomous Community of Catalonia; and never with exclusive nature, i.e. abstracted from other relationship frameworks.

This exact delimitation of the subject, whose reciprocal relation is intended to be organized in "the general and permanent framework" constituted by the Bilateral Commission, is of great importance in two main issues. On the one hand, the issue related to the true meaning and scope of the principle of bilateralism declared in Article 3.1 and the authentic dimension of the participation generically mentioned in Article 174. Both issues must be solved, as we have already stated, excluding the unconstitutionality of any interpretation that may consider both provisions as an impossible duality between the Spanish State and the Autonomous Community of Catalonia or at least a unfeasible sensu stricto participation (i.e. decisive) by the Catalan Government in the exercise of jurisdictions alien to it. On the other hand, and this is what is relevant here and now, the issue has to do with the "State powers", whose exercise is set out in Article 183.1 a) as a possible object for "the participation and collaboration" of the Government of the Autonomous Community.

In fact, as the parties involved in the Bilateral Commission are the State Government and the Catalan Government, it is obvious that the powers involved can only be sensu stricto and in terms of voluntary cooperation, those belonging to these executive branches, whose power of exercise cannot be conditioned or limited by the Commission. Moreover, those which under the Constitution and the Statute of Autonomy belong to other bodies of the State and the Government of the Autonomous Community are naturally excluded, as are, in particular and evidently, the legislative powers, whose exercise, other than urgent legislation and cases of delegation, belongs strictly to the Cortes Generales and to the Parliament of Catalonia, bodies which are not part of the Bilateral Commission.

As a logical consequence, it can be inferred that the collaboration mechanism of the Government of the Autonomous Community in the exercise of State powers, referred to in Article 183.1 a), cannot have another dimension than that inherent to the necessary and appropriate relations of cooperation between institutions endowed with their own inalienable powers. In other words, apart from governmental powers sensu stricto (the exercise of which under no circumstances can be constrained by decisive interference), with regard to the rest of the "State powers" mentioned in the provision, especially legislative powers, the participation by the Government of the Autonomous Community, vis-à-vis the State Government, is constrained to the typical power of stimulating and motivating the exercise of a particular power by its exclusive holder. In other words, it has to be limited to a power of political action that is only compelling within its own political framework, to which it is necessarily limited.

Finally, in light of the above, the description in Article 183.1 of the Statute of Autonomy about the Generalitat-State Bilateral Commission, as the "general and permanent framework for relations between the Government of the Generalitat and the Government of the State", is not in conflict with the Constitution. This statement must be interpreted in the sense that it does not exclude other frameworks for relations, and it does not grant the Commission functions different from voluntary co-operation within the framework of the respective powers of both Governments, which are unavailable to the other. In consequence, the scope of this participation and collaboration in the exercise of the State's powers, as foreseen in section 1 a) of Article 183, is not in breach of the Constitution as it does not prevent or impair the State's full and free exercise of its own powers.

Interpreted in these terms, Article 183.1 of the Statute of Autonomy is not contrary to the Constitution, and this will be so stated in the ruling.

116. Paragraphs a), b) and f) of Section 2 of Article 183 are challenged. This Article lists the functions of the Generalitat-State Bilateral Commission, beginning with a general approach: "The functions of the Generalitat-State Bilateral Commission are to deliberate, make proposals and, if appropriate, reach agreements in the cases established in this Statute of Autonomy and, in general, in relation to the following areas." Among these areas, the petitioners exclusively refer to "Government bills that uniquely affect the distribution of powers between the State and the Generalitat." [2 a)], "Planning of the general economic policy of the Government of the State in all matters that uniquely affect the interests and powers of the Generalitat, and application and development of this policy." [2 b)] and, finally, "Proposal of a list of economic bodies, financial institutions and publicly-owned State companies in which the Generalitat may designate representatives, and the modalities and means of this representation." [2 f)].

The petitioners' criticism about these three specific areas is the same that they direct, in general, to all the powers of the Bilateral Commission, without further arguments: that they deal with matters, activities, or sectors which correspond to the State. Therefore, focusing on the specific powers attributed to the Commission by Article 183.2, and in the specific areas challenged by the appellants, it should be noted that these powers of deliberation, proposal and, sometimes, the adoption of resolutions through which the body that constitutes, in accordance with the definition stated in Article 183 of the Statute of Autonomy, "the general and permanent framework for relations between the Government of the Generalitat and the Government of the State", with the scope and effects established in the preceding legal basis, carries out its cooperative and collaborative effort enable the coordination between the powers of the State and the Government of the Autonomous Community, respectively, without permitting the decisions the Bilateral Commission may eventually take as a cooperative body to hinder the free and full exercise by the State of its own powers or, in consequence, replace, bind, or invalidate the decisions that should be taken.

Consequently, Article 183.2 of the Statute of Autonomy shall be upheld.

119. Article 185.1 states that "The Generalitat shall be informed by the State Government of initiatives for review of European Union treaties and of subsequent signing and ratification processes. The Government of the Generalitat and Parliament shall address, to the State Government and to the Cortes Generales, the observations that it deems pertinent to this effect." The positions concerning this provision sustained by the different parties have been set out in Fact 108. The analysis of the same must be based on the acknowledgement, already expressed, that Autonomous Communities, as holders of political autonomy to administer their own affairs, are directly interested in the activities performed by European Communities (STC 165/1994 dated May 26th, 1994, FJ 4). In this context, the provision now discussed us reflects general information given to Regional Governments, while the State Government takes charge of the review, subscription, and ratification initiatives regarding the European Union Treaties, and the powers of the Catalan Government and Parliament to make appropriate observations to the State Government and the Cortes Generales, which are both clearly shaped as statements of the principle of cooperation between the State and the Autonomous Community regarding matters, such as the European ones, in which devolved powers and interests are especially affected.

In addition, as this Court has repeatedly stated, although the treaty making power is exclusive of the State by virtue of Article 149.1.3 CE, our Constitution does not restrain collaboration between the State and the Autonomous Communities from being projected vis-à-vis international treaties, a situation affecting European Union treaties. In this way, we have accepted that Autonomous Communities can exercise some limited powers regarding the process for drawing up treaties (power to urge their celebration, receipt of information, among others), provided that they do not call into question the State's powers to enter into and formalize the same (STC 137/1989 dated July 20th, 1989, FJ 4). The provision now being examined responds, as has been mentioned, to the same criterion, given that the right to information and the right to make observations include in it are devoid of any harmful effects for the State's power derived from Article 149.1.3 CE (STC 165/1994 dated May 26th, 1994, FJ 8) and, in accordance with the provisions contained in Article 184 of the Statute of Autonomy of Catalonia, the Generalitat's participation is related to the involvement of Catalan powers or interests. The content of the provision does not penetrate into the State's reserve pursuant to Article 149.1.3 CE, since it is the State's exclusive right to review, sign, and ratify European Union treaties, nor is there any breach of Article 93 CE, the ultimate foundation for our incorporation into the process of European integration and our ties with Community Law, to which we have referred at length in Declaration 1 dated December 13th, 2004.

Consequently, Article 185.1 of the Statute of Autonomy must be upheld.

120. The four sections of Article 186 of the Statute of Autonomy have been challenged. Section 1 provides: "The Generalitat participates in the formation of State positions before the European Union, especially before the Council of Ministers, in matters concerning the powers or interests of Catalonia, under the terms established by this Statute of Autonomy and the legislation on these matters." Petitioners maintain that his provision oversteps the bounds of the Government of the Autonomous Community's participation when it includes not only powers, but also matters related to Catalan interests; and, on the other hand, that the Government of the Autonomous Community cannot enjoy a right to unilateral participation in the formation of the State's positions, without specifying that, besides, "legislation on these matters" shall, in any case, be State regulations. Neither of these criticisms can be accepted. Regarding the potential overstepping of constitutional bounds for using the notion of interests, we shall refer, in order to avoid unnecessary repetitions, to what has been said above in relation to Article 184. On the other hand, the provision envisages the participation of the Government of the Autonomous Community in the formation of the State's position vis-à-vis the European Union in matters related, as was bound to be the case, to Catalan powers or interests, which evidently does not imply or mean that any unilateral participation is attributed to the Autonomous Community in

the formation of those positions, excluding the participation of other Autonomous Communities. Furthermore, we have mentioned that when the State commits itself to the European Union, it must count on the maximum potential agreement from the Autonomous Communities (STC 128/1999 dated July 1st, 1999, FJ 10). Finally, the participation referred to in Article 186.1 must take place within the terms established in the Statute of Autonomy itself, and in legislation concerning this matter, which cannot be other than that established by the State under the different powers attributed by Article 149.1 CE, and corresponding to the various community policies when dealing especially with the process of formation of the State's positions before the European Union.

The unconstitutionality of Article 186.2 of the Statute of Autonomy would lie, according to the petitioners, in that it imposes a bilateral participation of the Government of the Autonomous Community in European matters that affect solely to Catalonia, without making any reference to State legislation about that matter. The first paragraph of the section in question declares the participation of the Government of Catalonia "bilaterally in forming the State positions in those European affairs which affect it exclusively". In its second paragraph, the provision states that "in other cases, participation shall be in the framework of multilateral procedures to be established". So, the provision states in a general and abstract manner, the ways and procedures through which the Government of the Autonomous Community participates in the formation of the State's positions, according to the criterion that European affairs affect solely to Catalonia or not. The first case involves bilateral participation, and the second multilateral procedures. At first, no constitutional objections can be made to the fact that the Statute of Autonomy, as the basic institutional rule of the Autonomous Community, includes, in a general and abstract way, as in Article 186.2, a general declaration about the way it participates in the process for the formation of the State's positions vis-à-vis the European Union in affairs which affect it, having regard or not to the principles of exclusivity for such involvement, given the importance of the European institutions' performance in the exercise of Autonomous Communities' powers and their interests, when it is evidently the State legislator that is in charge of determining the assumptions, terms, ways, and conditions for such participation (Grounds 111 and 115).

Nor is the Statute of Autonomy, as the basic institutional rule for the Autonomous Community, an inadequate normative location to classify the position put forward by the Government of the Autonomous Community for the formation of the State's position as decisive "if it affects its exclusive powers and if the European proposal or initiative could lead to especially important financial or administrative consequences for Catalonia". Two conditions that are not alternative, or removable, but accumulative, i.e. they must necessarily occur at the same time. In accordance with the second additional provision of the Statute of Autonomy, to which claimants refer when mentioning Article 186.3, and as we have already stated when referring to its challenge (Ground 117), the position sustained by the Government of the Autonomous Community, albeit defined as "decisive", is not binding on the State, which is free to accept it or not, although it must ultimately justify the non-acceptance of the position before the Generalitat-State Bilateral Commission. Any discrepancy with that "decisive" position exteriorized by the State is seen as a collaborative and cooperative mechanism in a scenario in which the powers and interests of the Autonomous Community are especially affected. Finally, the nonbinding character of this position defined as decisive excludes the supposed impossibility, referred to in the complaint, that the State can set out and enforce its position, given that, generalizing this assumption in the Statute of Autonomy; two or more Autonomous Communities might have diverging positions.

Article 186.4 establishes that "The State shall provide the Generalitat with complete and up-to-date information about the initiatives and proposals presented to the European Union. The Government of the Generalitat and the Parliament of Catalonia shall address to the State Government and the Cortes Generales, as the case may be, the observations and proposals

deemed pertinent to these initiatives and proposals." As we have already stated in relation to a similar provision in Article 185.1, the provision involves an information mechanism between the State and the Autonomous Community and the power of the Government and of the Parliament of Catalonia to formulate proposals and observations clearly outlined, in both cases, as manifestations of a cooperation principle between the State and the Autonomous Community in matters, such as European affairs, which specifically affect Catalonia's powers and interests. Otherwise, there is no place for objections, as we have been stating with respect to similar provisions, to the inclusion of provisions of this type in the Statute of Autonomy.

Consequently, the challenge to Article 186 of the Statute of Autonomy must be rejected.

130. The challenge to Title VI of the Statute, "Funding of the Generalitat", addresses several provisions of Chapter I (The Finances of the Generalitat) and Chapter III (Local Governments Finances). The arguments of the complaint are stated in Fact 118; and the positions of the remaining parties are stated in Facts 119 to 121.

When dealing with the complaints regarding Chapter I, we must start from the fact that the State has exclusive power over the "General Treasury" (Article 149.1.14 CE), as well as the original power to establish taxes by means of an Act of Parliament (Article 133.1 CE) which, together with the fact that the regulation of the exercise of financial powers in the Autonomous Communities corresponds to the legislator of Organic Laws (Article 157.3 CE), establishes that these must be "competent to regulate, not only their own taxes, but also the general framework of the whole tax system and the delimitation of the financial powers of the Autonomous Communities in relation to those of the State" (STC 72/2003 dated April 10th, 2003, FJ 5).

In this framework, the Statutes of Autonomy subject to the ordinary funding system can legitimately regulate the Region's Treasury "as an essential element for the achievement of political autonomy" (STC 289/2000 dated November 30th, 2000, FJ 3) and, therefore, for the exercise of the powers they assume; but they shall do so taking into account that the Constitution establishes that the financial autonomy of the Autonomous Communities must be "according to the principles of coordination with the State Treasury, and of solidarity among all Spaniards" (Article 156.1 CE), and that the State guarantees the effective execution of the principle of solidarity (Article 138.1 CE). It is clear that the financial autonomy of the Autonomous Communities demands a minimum level of resources allowing the exercise of their powers "in the framework of the real possibilities of the financial system of the State as a whole" (STC 13/2007 dated January 18th, 2007, FJ 5 and those cited therein). Due to the fact that the financial aptitude of the Autonomous Communities is mainly achieved through taxes assigned to them by the State and other participations in the latter's revenues (Article 157.1 CE), it is obvious that the decisions aiming at guaranteeing it "shall be adopted in a general and homogeneous way for the whole system and, consequently, by the State and in the State's sphere of intervention", making it impossible to take "unilateral decisions which ... would have consequences on the whole ... and would constrain the decisions of other Regional Administrations and the State Administration" (STC 104/1988 dated June 8th, 1988, FJ 4; in the same sense, STC 14/2004 dated February 12th, 2004, FJ 7). It is therefore necessary, for this type of decisions, whose final determination corresponds to the Cortes Generales, to be adopted within the multilateral body (in this case, the Fiscal and Financial Policy Council) in which the State exercises functions of cooperation and coordination under Article 149.1.14 CE. Such intervention in the multilateral framework must be integrated with the functions that have been attributed, in each case, to the Bilateral Joint Commissions in their respective Statutes of Autonomy "as bilateral bodies specifically aimed at fulfilling the application of the criteria arranged within the Fiscal and Financial Policy Council for each Autonomous Community" (STC 13/2007, FJ 8), allowing, prior to the intervention of the multilateral body, "to bring positions closer, or a posteriori ... and fulfilling the application of the resources anticipated in the financing system which the National Parliament could establish, taking into account the

recommendations of the Fiscal and Financial Policy Council, for each Autonomous Community" (STC 13/2007, FJ 8).

In the examination of the specific challenge to the articles, the aim will focus on those provisions included in the petitum of the complaint, and whose unconstitutionality has been justified with minimally sufficient argumentation. Because of this and as a result of what has been stated in Fact 118, Article 210 section 2 c), e), f), g) and h), 3 and 4; section 2 of the third additional provision, the fourth and sixth additional provisions, section 1 of the first final provision and the second and third final provisions are excluded from the sphere of our opinion. Consequently, our examination will be limited to the following provisions: Articles 201.3 and 4; 204.1 and 4; 205, first paragraph; 206.3 and 5; 210.1, 2 a), b) and d); 218.2 and 5; 219.2 and 4; and section 1 of the third additional provision; the last paragraph of the seventh additional provision; and the eighth, ninth and tenth additional provisions.

131. Petitioners challenge Article 201.3 and 4. Section 3 states that "the development of the contents of this Title is the responsibility of the State-Generalitat Joint Economic and Fiscal Affairs Commission." The complaint considers that this provision (directly related to Article 210 and to the last paragraph of the seventh additional provision and section 1 of the first final provision and the third final provision of the Statute of Autonomy) shapes a co-decision system in financial matters, which turns the exclusive power of the State established in Article 149.1.14 CE into a shared or concurrent power, preventing the exercise of the State's power to cooperate.

Article 201.3 is the first provision in Title VI, which sets out the "principles" governing the Treasury of the Government of the Autonomous Community. For this reason, it must be integrated with sections 1 and 2, which have not been appealed against herein. Section 1 states that "Taxation and financial relations between the State and the Generalitat are regulated by the Constitution, by this Statute of Autonomy and by the organic law referred to in Section 3 of Article 157 of the Constitution." Section 2 of Article 201 of the Statute establishes that the funding of the Government of the Autonomous Community is governed by the principles "of financial autonomy, coordination, solidarity and transparency in fiscal and financial relations between the Public Administration bodies, and also by the principles of sufficiency of resources, fiscal responsibility, equity and institutional loyalty between the aforementioned Public Administration bodies." In this way, sections 1 and 2 of Article 201 clearly recognize the principles which the complaint considers to be ignored by Article 201.3. Furthermore, this last provision cannot either remain disconnected from what is generally established in the Statute of Autonomy regarding the framework for collaboration by the Government of the Autonomous Community with the State and with other Autonomous Communities, specifically under Article 175.2 of the Statute of Autonomy, which has not been challenged and which establishes that "the Generalitat also collaborates with the State through the multilateral bodies and procedures in areas and matters of common interest". Because of this, reference in Article 201.3 to the State-Generalitat Joint Economic and Fiscal Affairs Commission regarding the "development of the contents of this Title" must be related to the framework for coordination and cooperation established in the Constitution. Therefore, it does not mean that it is concerned with the agreements which, a posteriori, will determine the regulatory development or enforcement of Title VI. This Joint Commission is an instrument to facilitate the integration of the positions of the State and the Autonomous Community, because some matters require specific treatment or else by facilitating the preparation of the resolutions to be adopted within multilateral bodies, or even because it allows the common deliberation regarding the application in the Autonomous Community of Catalonia of decisions or agreements adopted by the State or by the corresponding multilateral bodies. As a result of the reasons set out, Article 201.3 of the Statute of Autonomy respects coordination by the State and does not disturb its powers.

The complaint also includes Article 201.4 of the Statute of Autonomy, which states: "In accordance with Article 138.2 of the Constitution, the financing of the Generalitat shall not entail

discriminatory effects for Catalonia with respect to other autonomous communities. This principle shall fully respect the criteria of solidarity set out in Article 206 of this Statute of Autonomy." According to the claimants, the concept of "privilege" used in Article 138.2 CE does not sit well with the provision transcribed which announces affirmative action for Catalonia, with the consequence that it imposes on the system as a whole the regulations related to solidarity contained in the Statute of Autonomy.

When Article 138.2 CE proclaims that differences among the Statutes of Autonomy "can never imply economic or social privileges", it is not imposing an absolute homogeneity in such spheres, as this would be contrary to the criterion of section 1 in the same article, which shapes the principle of solidarity as an instrument to achieve an "adequate and just economic equilibrium among the different parts of the Spanish territory". As a result, what the Constitution forbids are differences not sustained by objective and reasonable justifications, resulting in benefits that other Autonomous Communities, under the same circumstances, could not obtain. Therefore, after having seen that the Statute submits the funding of the Autonomous Community, among others, to the principles of coordination, solidarity, equity and loyalty among the Public Administrations (Article 201.2 of the Statute, not contested in this action of unconstitutionality), it is not illegitimate for the first subsection of Article 201.4 of the Statute of Autonomy to assert the principle that the funding of the Government of the Autonomous Community must not involve discriminatory effects for Catalonia, given the fact that it directly responds, contrario sensu, to what is established in Article 138.2 CE which, as we have already mentioned, rejects economic or social privileges among Autonomous Communities.

The complaint also argues for the unconstitutionality of Article 201.4 of the Statute of Autonomy by stating that, in its second subsection, it links the nondiscrimination of Catalonia in financial matters to the criteria which, according to solidarity, should be "fully" respected; these criteria are listed in Article 206 and would be, at the same time, unconstitutional. As we have already stated, the State must guarantee the principle of solidarity (Article 138.1 CE), so the Statute of Autonomy cannot contain criteria which distort or limit such a power of the State. Because of this, the remission present in Article 201.4 to Article 206 —of which only sections 3 and 5 are challenged—, will be analyzed in its significance and scope once sections 3 and 5 of Article 206 of the Statute have been examined, making it possible to conclude here the rejection of the challenge to Article 201.4 due to such remission.

132. Articles 204.1 and 204.4 —"Taxation Agency of Catalonia"— of the Statute of Autonomy have been challenged. According to the former, "the Taxation Agency of Catalonia is responsible for management, collection, settlement and inspection of all Generalitat of Catalonia taxes and also, when delegated by the State, of State taxes which are totally ceded to the Generalitat." On the other hand, Article 204.4 declares that "the Taxation Agency of Catalonia shall be created by an Act of Parliament and shall have full power and attributes for organization and exercise of the functions referred to in Section 1." The complaint sustains, first of all, that the provision does not observe "reciprocity" since it does not provide for any State participation in the Catalan Agency, not even to allow coordination of tasks. Besides, petitioners consider that it is not possible to attribute to an Act of the Regional Parliament the power to regulate a Catalan Tax Agency with "full power and attributes for organization and exercise of the functions referred to in Section 1", since this section refers to delegated administration of taxes completely assigned by the State to the Autonomous Community, in such a way that these taxes would not be "assigned taxes", strictly speaking, especially when Article 205 of the Statute of Autonomy attributes to the Government of the Autonomous Community the administrative review of its own resolutions.

The absence in Article 204.1 of any reference to reciprocity, which would determine the acknowledgement of the State's possibility to take control of the activity of regional bodies engaging in the acts stated in this very Article does not bring into question its constitutionality,

given the fact that this Court has expressly rejected the notion that relationships between the State and the Autonomous Communities can be supported on the principle of reciprocity (STC 132/1998 dated June 18th, 1998, FJ 10 and the judgments cited therein), given the State's position of superiority (STC 4/1981, FJ 3) and that all coordination regarding financing matters, which implicitly include the idea of hierarchy, corresponds to the State.

No problems of constitutionality arise from the regional powers for tax administration stated in Article 204.1 (regarding management, collection, settlement, and inspection) when they are projected on Government of the Autonomous Community taxes and it is thus affirmed in the complaint, which criticizes the provision that these powers are founded on "State taxes totally ceded to the Generalitat". In this regard, Article 156.2 CE states that "Autonomous Communities may act as State delegates or collaborators for the collection, administration, and settlement of State tax resources, in accordance with laws and Statutes of Autonomy". This is, precisely, the constitutional provision stated in the article challenged, when it determines that the powers in question be exercised by State delegation, obviously on the terms established by the latter. Certainly, the reference the provision in the Statute of Autonomy makes to "inspection" of assigned taxes is not specifically stated in the provision of Article 156.2 CE, but it could be naturally included in the generic scope of "administration", which is included, and it is thus understood by the Organic Law on Regional Financing (Article 19). It should also be noted that the provision does not regulate, or provide for, the assignment of taxes by the State, but instead refers to taxes that have been assigned or may in future be assigned. Therefore, these regional powers related to completely assigned State taxes do not have the scope attributed to them in the complaint. It is the duty of the Organic Laws to regulate "the exercise of financial competencies" (Article 157.3 CE) stated in the statutory provision and, consequently, the exercise of autonomous powers related to tax assignment, which will be established in the corresponding Tax Assignment Act with such scope as the legislator may consider appropriate (seventh additional provision of the Statute of Autonomy). In this way, the statement responds to the Statute of Autonomy's inherent character as the supreme law of the Regional Legal System, which can include in its core the general prescriptions of its political independence provided that it does not reduce the scope of Organic Laws and the general framework for coordination and cooperation characteristic of this matter. Therefore, we shall consider how to proceed in this case, since Article 204.1 of the Statute of Autonomy regards administrative powers over assigned taxes, without further specification; this statement is respectful of the State's original power in tax matters and is subject to what it may be established about said delegation in the assignment regulation State rule.

Challenge of Article 204.4 must be rejected, since this provision refers to the organizational and functional scope of the Catalan Tax Agency, thus section 1 becomes instrumental, without, as we have mentioned, the reference to its "full power and attributes for organization and exercise of the functions referred to in Section 1" implying any invasion or limitation of the scope reserved to the legislator of organic laws.

Consequently, the challenge to Article 204.1 and 4 of the Statute of Autonomy of Catalonia must be rejected.

134. Sections 3 and 5 of Article 206 ("Participation in income from State taxes and leveling and solidarity mechanisms") have been challenged. Section 3 stipulates that "The financial resources available to the Generalitat may be adjusted to enable the State financing system to have sufficient resources to ensure leveling and solidarity with other autonomous communities, so that the education, health, and other essential social services of the welfare state provided by the different autonomous governments can achieve similar levels throughout the State, provided that they also make a similar fiscal effort. Similarly, where appropriate, the Generalitat receives resources from the leveling and solidarity mechanisms. The afore-mentioned levels shall be established by the State."

Petitioners consider that this provision interferes with the State's powers in two ways. On the one hand, it ignores the restriction of the fundamental public services to be leveled to "education, health care, and other essential public services". And, on the other hand, by making the Government of the Autonomous Community' s contribution to leveling and solidarity with other Autonomous Communities conditional on these "also making a similar fiscal effort" to that of the Generalitat. Both aspects are included in the first sub-section of section 3.

A systematic reading of Article 206.3 of the Statute if Autonomy has to establish a relation with section 1 of the same Article, not challenged in this action of unconstitutionality, which states that "the resources of the Generalitat are, among others, those deriving from its taxation revenues, increased or reduced in accordance with its participation in the leveling and solidarity mechanisms". The Statute of Autonomy therefore states the range of resources of the Regional Government without altering, at first, solidarity and provision of fundamental public services in the whole territory of Spain; mechanisms that the State must manage in order to guarantee both "a minimum level in the provision of fundamental public services in the whole territory of Spain" (Article 158.1, in its connection with Articles 139.1 and 149.1.1 CE) and, likewise, solidarity between territories (Articles 2, 138.1, 156.1 and 158 CE, in their interconnection).

Both guarantees have different intended recipients, given that the leveling of fundamental services applies to their respective users, while the solidarity guarantee refers to the different devolved territories.

The first subsection in Article 206.3 of the Statute of Autonomy expressly safeguards the requirements for solidarity between the territories by repeating what has been stated in Article 206.1, while in its reference to the leveling of services the expression "education, health, and other essential social services" included in the Statute of Autonomy, is equivalent to that of "fundamental public services" referred to in Article 158. CE; but in no case could it have any reducing effect since it is the State's task to determine which public services are fundamental. Likewise, the provision's criterion that such services should reach "similar levels throughout the State" presupposes the "minimum level" in the provision of fundamental public services stated in the aforementioned Article 158.1 CE. It must be considered, finally, that Article 206.3 of the Statute of Autonomy states that "the afore-mentioned levels shall be established by the State", thus expressly admitting, therefore, that it is the State who determines the level of provision of fundamental services and the level of solidarity to be guaranteed and that, in consequence, as the challenged provision states, the resources provided by the Government of the Autonomous Community may be "adjusted" to that end. However, in spite of the acknowledgement of this State competency, the first section states that the Government of the Autonomous Community contribution to solidarity and service leveling will be made "provided that they [the Autonomous Communities] also make a similar fiscal effort". Therefore, this phrase is unconstitutional.

Although the provision does not state which should be the content and scope of the expression "fiscal effort", it actually establishes as a requisite to make Catalonia contribute to the balance of fundamental and solidarity services that the rest of the Autonomous Communities carry out a "similar fiscal effort" to that made by Catalonia, which is a decisive prescription of such unconstitutionality. Therefore, as we have been mentioning, it is the State's task, under Article 149.1.14 CE in its connection with Articles 138.1 and 157.3 CE, to regulate the exercise of financial powers by the Autonomous Communities, and to establish their levels of contribution to leveling and solidarity, as stated in the last paragraph of Article 206.3 of the Catalan Statute of Autonomy. In this context, determining which fiscal effort the Autonomous Communities shall make is a matter to be regulated only by the State, apart from the corresponding acts within the constitutionally provided multilateral system of cooperation and coordination. Therefore, it is, in short, a matter that, in no case, the Statute of Autonomy shall impose on Autonomous Communities, since, by doing so, the said State powers and the principle of financial independence of the Autonomous Communities would be affected at the same time. This

financial independence is expressly connected by Article 156.1 CE with the principle of coordination with the State Treasury.

According to Article 206.5 of the Statute, "The State shall guarantee that application of the leveling mechanisms shall in no case alter the position of Catalonia in the pre-leveling ranking of per capita earnings."

If, as we have already stated, the respect for the State's powers as the guarantor of solidarity between territories in the economic and financial framework does not allow the Statute of Autonomy to impose conditions such as that included in Article 206.3 regarding the similar fiscal effort of the different Autonomous Communities, then the provision in Article 206.5 of the Statute should also be declared unconstitutional and null, given that it shares the same conditional and imperative nature.

However, this is not the case, because the provision included in Article 206.5 of the Statute of Autonomy is not, in itself, a condition imposed on the State by the Catalan Statute of Autonomy, but only the repeated expression of a duty that for the State stems immediately and directly from the Constitution, which imposes the guarantee of effective fulfillment of the principle of solidarity by "ensuring the establishment of an appropriate and fair economic balance between the different parts of the Spanish territory" (Article 138.1 CE). Appropriateness and fairness that, predicated on the economic balance that should structure the achievement of solidarity between the Autonomous Communities as guaranteed by the State, cannot result, for the prosperous Autonomous Communities, in a harm that is more than that inherent to all contributors in favor of the less prosperous ones with a view to the progressive approximation between all of them, therefore excluding the result of a worse relative position for the contributor with regard to the party benefiting from a contribution that would no longer be based on solidarity with the aim of finally achieving a balance to favor, instead, an imbalance of a different kind from that intended to be counteracted. This principle of solidarity is instrumented through leveling mechanisms (Article 158.1 CE), and solidarity between territories (Article 158.2 CE).

Article 206.5 of the Statute of Autonomy must be understood, ultimately, as a clear manifestation of a principle attached to the model of solidarity between territories in which the State is constitutionally obliged to endeavor an "appropriate, fair economic equilibrium" between the Autonomous Communities, not affecting those that are more prosperous beyond what is reasonably necessary, to achieve the goal of promoting the poorer ones. Therefore, the guarantee of the State referred to in this provision would only be applicable when the alteration of the position of the Autonomous Community of Catalonia resulted, not from the general application of leveling mechanisms, but instead from the collaboration rendered by Catalonia as a consequence of its possible collaboration in such mechanisms. With that limited scope, interpreted in this way, the provision is not contrary to the Constitution.

As a conclusion, the subsection "as long as they also make a similar fiscal effort", included in Article 206.3 of the Statute is unconstitutional and void, and Article 206.5 of the Statute is not unconstitutional if it is interpreted in the said terms, and this will be so stated in the ruling.

With both clarifications, as we have already warned (Ground 131), the scope of the remission that this provision has on Article 201.4 of the Statute is hereby determined.

138. The third additional provision establishes in its section 1 that "with the exception of the Inter-Territorial Compensation Fund, State investment in infrastructure in Catalonia, shall be equal to the relative participation of Catalonia's gross domestic product in the gross domestic product of the State for a period of seven years. These investments may also be employed in eliminating tolls or for construction of alternative expressway roads." The petitioners consider that this budgetary commitment, apart from improperly binding the Cortes Generales in the exercise of its power under Article 134.1 CE, also entails an economic privilege contrary to the Constitution (Article 138.2 CE) and incompatible with the equitable assignation and redistribution of the national wealth among the different territories (Articles 31.2, 40.1, 131.1

and 138.1 CE). The State Solicitor understands, on the contrary, that this is only about a political commitment which does not oblige the drafter of the budget, while the Government of the Autonomous Community and the Parliament of Catalonia argue that the Statute of Autonomy may affect the State Budget without violating a constitutional reserve, especially if, as is the case here, a specific situation of a historical deficit in infrastructure investment is being mitigated.

The censure of the provision under examination as an expression of an economic privilege cannot be accepted, not only because, for the purposes of achieving the effective realization of the principle of solidarity, this cannot be related to only one of the numerous variables which, like the one now being examined, contribute to the formation of an regional financing system as the basis for attaining, as a whole and depending on the outcome, the constitutional principles invoked by the appellants, but also and, most importantly, because such provision cannot, in any way, as we will now state, have effects that are directly binding on the State.

It cannot be accepted that section 1 of the third additional provision binds the Cortes Generales in the exercise of their functions for examining, amending and approving the General State Budget, as we have already stated, with respect to the budget commitments formalized in a Statute of Autonomy, that they do not constitute "a resource which the State must obligatorily consign to the general budgets of each financial year", because it is up to the State "taking into account the totality of the instruments aimed at the financing of the Autonomous Communities, the needs of each one and the real possibilities of the State's financial system, to decide exclusively on whether it must, in each case, and in what amount, effect the assignations according to the exclusive subject matter power attributed to it in Article 149.1.14 CE (general treasury). From the affirmation of a constitutional legitimacy of an exceptional financing mechanism ... it cannot be concluded that the State must necessarily assign a specific budget item unless the State and the Autonomous Community have reached an agreement within the Joint Commission"; it is up to "the State to take a decision as to the establishment of such aid, although its action must respect the constitutional principle of loyalty which is binding on all and requires the Government to be 'extremely zealous in the achievement of agreements within the Joint Commission' (STC 209/1990 dated December 20th, 1990, FJ 4)" (STC 13/2007 dated January 18th, 2007, FJ 11).

Section 1 of the third additional provision must therefore be interpreted in the sense that it does not bind the State to define its investment policy nor does it infringe the full freedom of the National Parliament to make decisions regarding the existence and amount of such investments.

Interpreted in these terms, section 1 of the third additional provision of the Statute of Autonomy of Catalonia is not contrary to the Constitution and this will be so stated in the ruling.

140. Sections 2 and 5 of Article 218 of the Statute of Autonomy are also challenged. The first attributes to the Government of the Autonomous Community powers over the matter of local government finances, including certain powers that the appellants consider to be contrary to Articles 133.1, 133.2, 140, 149.1.14 and 149.1.18 CE.

The first subsection of Article 218.2 of the Statute attributes a generic power over the matter of local government finances to the Government of the Autonomous Community which is, in the opinion of the petitioners, contrary to the empowering titles of the State stipulated in sections 14 and 18 of Article 149.1 CE. The challenge must be rejected as this same provision specifies the region's power is "within the framework established by the Constitution and the State regulations", within which the region's powers over the matter of local financing must therefore be developed.

The second subsection of Article 218.2 of the Statute states the possibility that the Government of the Autonomous Community's power over local finances includes the ability to establish and regulate taxes corresponding to local entities. According to the complaint, such a provision threatens local autonomy and the central core of the financial sufficiency of the municipalities, and it is also considered that this full legislative power of the Government of the Autonomous

Community weakens the reserve of legislation to the State. In the first place, we must state that the subsection examined does not attribute a full legislative power over this matter to the Autonomous Community, as it is limited to the consideration of a possibility conditional on the State lawmaking body deciding in favor of it. Nor can we accept the statement contained in the complaint that such an attribution would in itself be contrary to the autonomy and financial sufficiency of the local entities, as there is no reason to understand that the hypothetical attribution to the Autonomous Community of legislative power over local taxes, considered in and of itself, would deprive local bodies of sufficient resources; rather on the contrary, the Statute of Autonomy itself, in its Article 217, which has not been challenged, establishes a regulation contrary to this possibility by imposing on the Government of the Autonomous Community the responsibility for overseeing the fulfillment of the principles of autonomy and sufficiency of the resources of local treasuries. However, according to Articles 31.3, 133.1 and 133.2 CE, the creation of local taxes must be done through the state legislator, whose intervention is required in sections 1 and 2 of Article 133 of the Constitution. This regulatory power constitutionally based "on the exclusive power over the General Treasury (Article 149.1.14 CE), with the intervention of the Autonomous Communities in this specific regulatory area being therefore forbidden" (STC 233/1999 dated December 16th, FJ 22). Summing up, it is about an exclusive power of the State which does not allow the Autonomous Communities to be involved in the creation and regulation of the taxes inherent to local entities. A different matter, quite alien to the matter in question, is the fact that Autonomous Communities may assign their own taxes to the local corporations within their territory, as stated in our legal philosophy (STC 233/1999, FJ 22). In conclusion, the second subsection of Article 218.2 of the Statute ("This power may include the legislative capacity to establish and regulate local government taxes") is unconstitutional.

The third subsection of Article 218.2 of the Statute includes, in the powers of the Government of the Autonomous Community over matters concerning local finances, the ability to establish the criteria for distribution of participations depending on the budget of the Generalitat. The petitioners sustain that this provision gives the Catalan Government the possibility of distributing both local bodies' shares in the State taxes and the unconditional subsidies established by the same, therefore violating State's powers and establishing a kind of financial supervision over local entities which is contrary to their financial sufficiency.

It is true that the provision does not refer to shares in the "revenue" of the Generalitat, but instead to those depending on its "budget", and since, in accordance with Article 219.2 of the Statute of Autonomy, the local government revenues consistent with shares in taxes and subsidies established by the State will be received through the Government of the Autonomous Community, it could be understood that the regulation examined here gives the Generalitat the power to set the distribution criteria for all the revenue received by the local entities through that budget, regardless of whether they are a result of their share in the revenue or unconditional subsidies established by the State or a result of their share in the revenue or unconditional subsidies established by the Catalan Government.

This is despite the fact that the systematic consideration of the provision challenged shows that the Government of the Autonomous Community is only attributed such a power in relation to the resources established by the Autonomous Community in its Budget, as this power, as well as the others included in Article 218.2 of the Statute of Autonomy, is held by it "within the framework established by the Constitution and the State regulations", pursuant to its first subsection. This necessarily leads to the fact that the Generalitat's power is limited, exclusively, to the establishment of the criteria for distributing the local entities' shares in the Government of the Autonomous Community's revenue, as well as any unconditional subsidies it may decide to establish, necessarily observing the State's powers to set homogeneous distribution criteria for the revenue of local entities consistent with their share of State revenue [STC 331/1993, FJ 2 B)].

This criterion is guaranteed, furthermore, by Article 219.2 of the Statute of Autonomy, which orders that the distribution of local incomes consisting in shares in taxes and unconditional State subsidies should be effected by the Government of the Autonomous Community "respecting the criteria of State legislation in this are", which also allows us to rule out the recrimination that, by this means, a kind of wrongful financial supervision might be established for the Government of the Autonomous Community over local entities.

Article 218.5 entrust the Government of the Autonomous Community the financial supervision over local governments, observing the autonomy established by the Constitution, is subject to challenge because, in the petitioners' opinion, such supervision not only replaces the financial supervision of the State by that of an Autonomous Community, but is also contrary to municipal autonomy by omitting that it must be subject to State regulation. This section has a content similar to that of other provisions included in some of the first Statutes of Autonomy (such as Article 48.1 of the Statute of Autonomy for Catalonia approved in 1979) and does not fall into unconstitutionality, as we have already stated that it is undeniable "that Catalonia has assumed the power of financial supervision over the local entities, limited by their local autonomy and observing the bases stated in Article 149.1.18" (STC 57/1983 dated June 28th, 1983, FJ 5, and STC 233/1999 dated December 16th, 1999, FJ 4 c, among many others). On the other hand, the omission of the reference to State law in Article 218.5 of the Statute of Autonomy cannot be understood as ignorance of the powers stated in Article 149.1.18 CE, given the provision of section 2 in that same article of the Statute of Autonomy which, as has been pointed out, attributes the power over local finances to the Government of the Autonomous Community "within the framework established by the Constitution and the State Regulations", a provision to which the financial supervision of the local governments referred to in this section 5 is also subject.

Consequently, the subsection stating "this power may include the legislative capacity to establish and regulate local government taxes" included in Article 218.2 must be declared unconstitutional and null, with the challenges relating to the rest of Article 218.2 of the Statute of Autonomy and Article 218.5 being dismissed.

143. The aim of Title VII is "the reform of the Statute of Autonomy" and the action of unconstitutionality challenges the regulation established in paragraphs b) and d) of Article 222.1 of the and paragraphs d) and i) of Article 223.1. The petitioners claim that the intervention of the National Parliament cannot be reduced to mere ratification, nor is it constitutionally possible for the Government of the Autonomous Community to submit amendments to its Statute of Autonomy to a public referendum without first having the authorization of the State and due notice given by the latter. The positions of the parties in this regard are set out in Facts 122 to 125.

According to paragraph b) of Article 222.1, in the case of the reform of Titles I and II of the Statute of Autonomy, "the approval of reform requires the favorable vote of two-thirds of the members of Parliament, submission to and consultation with the Cortes Generales, ratification by the Cortes Generales by means of an organic law, and approval in a referendum by the Catalan electorate."

Article 223.1 of the Statute provides a procedure for reform of the remaining titles of the Statute whose approval (paragraph b) has not been challenged, although the alternative formula for approval provided in paragraph d) is claimed to be unconstitutional, whereby "the proposed reform may be submitted for a vote of ratification by the Congress and Senate in accordance with the procedure established in the respective parliamentary Rules of Procedure." To this purpose, Parliament of Catalonia "shall appoint a delegation to present the proposed reform of the Statute of Autonomy to the Congress and the Senate", and "if the Cortes Generales ratify the proposed reform of the Statute of Autonomy, the corresponding Organic Law shall be considered approved".

Article 147.3 CE specifically provides that the Statutes of Autonomy are rules with the power to establish their own reform procedure and that, regardless of the procedure established by the Statute of Autonomy, the reform "will in all cases require approval by the Cortes Generales through an Organic Law". Articles 222 and 223 of the Statute of Autonomy of Catalonia strictly follow the first, establishing a reform procedure whose formalities vary according to the provisions under review. Nothing is said in the lawsuit against that procedural change in itself, but just to the degree that, in the opinion of the petitioners, only in one of its variations [that provided in Article 223.1 b) of the Statute of Autonomy] does the Statute of Autonomy strictly follow, at least in principle, the mandate of Article 147.3 CE with regard to the approval of the reform by Organic Law. Article 222.1 b) of the Statute on the other hand speaks only of "ratification" through that specific form of law.

The evident parallelism that can be traced between Articles 222.1 b) and 223.1 b) of the Statute of Autonomy necessarily lead to the understanding that the use of the terms "ratification" and "approval respectively in the different provisions does not in any case have the scope intended by the appellants. The two paragraphs coincide in establishing a procedure for reform that is distinguished in its use of the Cortes Generales. This is the only substantive difference that can be seen between the two provisions which otherwise defer to the National Parliament, as the use of the term "ratification" in Article 222.1 b) can have no scope with respect to the process of forming the will of the Cortes Generales inasmuch as, unlike the terms of Article 223.1 d), the provision is not attached to any procedural provisions to differentiate it from a procedure for approval, nor does it provide for the formalization by any other channel, which is the fundamental required in Article 147.3 CE.

On the other hand, the breadth of the matter reserved for the procedure set out in Article 222 (Titles I and II of the Statute of Autonomy, pursuant to Article 222.1) makes it obvious that the State institutions and competencies could easily be involved in this kind of amendment, thus requiring the Cortes Generales to intervene with its full legislative power.

On the other hand, Article 223.1 d) of the Statute of Autonomy envisages the possibility of a "ratification vote" which in effect is seen as a specific process for forming the will of the National Parliament, in which it is limited to giving an affirmative order on a proposed reform, while not affecting any analysis of the content as is customary in approval procedures. This procedural peculiarity is only an alternative to the procedure established in Article 223.1 b) of the Statute of Autonomy, which expressly imposes "the approval by the Cortes Generales by means of an Organic Law". This alternative can in no case be imposed on the National Parliament itself, inasmuch as Article 223.1 d) of the Statute of Autonomy makes it clear that the proposed reform "may be submitted to a vote of ratification by the Congress and the Senate"; it is an option that, in short, could only come about if it was so freely decided by the National Parliament, "in accordance with the procedure established in the respective parliamentary Rules of Procedure" as also provided in the same article.

Consequently, this in no way prejudices the freedom of the Cortes Generales or lessens the powers inherent to its legislative power upon which the approval of any amendment to the Statute depends in any event, subject only to integration with the Legal System in the form of an Organic Law which is unavailable, in terms of content, procedure and formalities, as a legislative format to the drafters of the Statute of Autonomy.

144. Paragraph d) of Article 222.1 of the Statute of Autonomy of Catalonia provides that "once the reform has been ratified by the Cortes Generales, the Generalitat shall submit it to a referendum." In the case of amendments to the Titles of the Statute not included in Article 222 of the Statute of Autonomy, paragraph i) of Article 223.1 establishes that "Approval of the reform by the Cortes Generales by means of an organic law shall include the authorization of the State for the Generalitat to call the referendum referred to in paragraph b above, within a period no longer than six months." Although both alternatives refer to referenda concluding the

different procedures for reform, the peculiarities of each one do not affect the ratification process prior to the referendum, common in both cases. Consequently we can examine the constitutionality of Articles 222.1 d) and 223.1 i) of the Statute of Autonomy together.

The claims of unconstitutionality alleged by the petitioners must on the one hand be seen in light of the silence of Article 222.1 d) of the Statute of Autonomy on the indispensable State authorization and calls for referendum provided in that article; and on the other with, in their opinion, the undue attribution to the Government of the Autonomous Community of the power to call the referendum provided for under Article 223.1 i) of the Statute of Autonomy, which authorization the appellants likewise argue cannot be understood as implicit in the approval of the reform by the Cortes Generales.

With regard to the first of the claims, we must once again repeat that the competencies constitutionally granted to the State do not require any confirmation of the different Statutes of Autonomy. Consequently the silence of Article 222.1 d) of the Statute of Autonomy of Catalonia cannot be interpreted as a contradiction of the constitutional provisions invoked by the petitioners. Moreover the only relevant note is that this provision in particular simply provides that the reform of an Statute of Autonomy must be submitted to a referendum, and in this it scrupulously follows the line of the Constitution (Article 152.2 CE). The provision does not indicate who must authorize and call that referendum and therefore by default the response must be given from the constitutional discipline of the powers to authorize and call referenda. In short and as Article 223.1 i) of the Statute of Autonomy does deal with this matter, as already discussed, then a systematic interpretation of the Statute can of Autonomy strengthen the notion that the system established for authorizing and calling the referendum foreseen in Article 223 is also applicable to the referendum discussed in Article 222.

This system stems from the premise that the referendum on ratification of the reforms must be authorized by the State so that there can be not even a shadow of a doubt on the respect that is due and observed with respect to the exclusive power set forth in Article 149.1.32 CE. Therefore, the true question that requires resolution is whether the State authorization can be provided only by the National Government or also by the Cortes Generales in an Organic Law approving the reform of the Statute of Autonomy.

145. In this regard we must start by ruling out that Article 223.1 i) contemplates the possibility of the authorization being only implicit, as the provision provides that approval of the reform by the Cortes Generales through an Organic Law “shall include” the authorization of the State. This would require an express reference to that statement of will that cannot simply be assumed and that, on the other hand, should not be included in the regulatory text of the Statute of Autonomy, but rather in the Organic Law approving it as a specific and separate provision available only to the National Parliament.

With regard to the State body that is responsible for authorizing the referendum, the silence of Article 152.2 CE in that regard could be resolved with the referral made by Article 92.3 CE to the Organic Law required to regulate the conditions and procedure of the forms of referendum, which is set forth in the Constitution. As a result in view of Article 2.2 of Organic Law 2 dated January 18th, 1980, the competent State body would be the National Government. Consequently, the Cortes Generales could not authorize the referendum to ratify the reform of the Statute of Autonomy approved through an Organic Law. However, since this is a mandatory referendum held to satisfy the procedural requirements for the reform, it could never be challenged on the grounds of political opportunity characteristically inspiring the actions of the Government, and since in this case the same National Parliament is trusted to carry out the last act necessary to perfect its legislative will, from a constitutional perspective, it would not be possible to censure the fact that the legislative procedure should be protected and held harmless by excluding the intervention, even when formally proper, of the State Government. The provision of Organic Law 2/1980 would certainly thus be excepted, but only in line with the exception that the Organic

Law and the Constitution themselves provide for particular cases in which the authorization of certain referenda is reserved to the Congress, which in the case at hand would extend to both Chambers of the National Parliament.

146. It remains to be decided whether the referenda provided for in Articles 222 and 223 of the Statute of Autonomy can be called by the Government of the Autonomous Community, or if this must be done by the King. The appellants invoke Article 62 c) CE in favor of the second, so that it falls to the King "[to] call a referendum in the cases provided for in the Constitution". The referendum concerning the reform of an Statute of Autonomy could certainly be included in that category, so the royal call for a referendum would be necessary. Despite this, with regard to the functions attributed to the Head of State in Article 62 CE it has long since been noted that "the Monarch does not intervene in the sphere of the Regional Territories in acts in which he does intervene in the state area: Thus ... the Sovereign does not sanction the Laws of the Regional Territories. Neither does the Sovereign appoint members of the Government of the Autonomous Community nor issue decrees on behalf of those Governments, nor call elections or convene and dissolve the respective Legislative Assemblies, nor propose to these the candidates for the position of President of their respective Executives" (STC 5/1987 dated January 27th, 1987, FJ 5). All these functions, in short, based on the literal texts of the different paragraphs of Article 62 CE, could be said to be included among the other responsibilities of the King. However we understand, on the other hand, that the constitutional provisions referring to the King in his relations with the bodies of State, typically those listed in Article 62 CE, can be extended to the regional bodies "in cases where the King is expressly attributed an act relating to the Autonomous Communities" (STC 5/1987, FJ 5), such as for example, the case of appointing the Presidents (Article 152.1 CE).

With regard to the calling of a referendum for the reform of a Statute of Autonomy, the Constitution does not include this among the express functions of the Head of State, who is responsible for "calling a referendum in those cases provided for in the Constitution" by virtue of a constitutional provision which contemplates only acts referring to the bodies and functions of the State itself. There can be no violation of Article 62 c) CE by a provision such as Article 223.1 i) of the Statute of Autonomy of Catalonia, which refers strictly to a referendum seeking the declaration by a body in the Regional Territory, namely its electorate, regarding the content of a rule which, in due course, would become fully effective and form part of the Legal System, formalized as a law of the State, with royal sanction and enactment preceding its official publication, thereby rendering "visible the nexus linking the Autonomous Communities to the State, whose unity and permanence is defined by Article 56 of our Organic law as being symbolized by the King" (STC 5/1987, FJ 5).

147. Without prejudice to the above, after dismissing the violation of Article 62 c) CE, some doubts may remain regarding the constitutionality of this provision of the Statute examined, as Article 92.3 CE reserves the regulation of "the conditions and procedure for the different forms of referendum provided for in the Constitution" to an Organic Law, and of course the reform of a Statute of Autonomy is one of the questions for which a referendum is required. Since that Organic Law is today Law 2 dated January 18th, 1980, and, by virtue of Article 2.3 of that law, it is the King's prerogative "to call a referendum", it could be concluded in any case that a failure to observe that legal provision by a Statute of Autonomy would represent a breach of that provision of the Constitution.

However this conclusion would have to be dismissed for purely systemic institutional reasons. The matter at hand does not attempt to appeal to the certain fact that both before and after the effective date of Organic Law 2/1980 there have been Statutes of Autonomy that have contemplated a referendum called by the Government of the Autonomous Community for approval of amendments to the Statute (the Catalan Statute of 1979 and the Galician Statute of 1981) with all that this would entail in terms of a peacefully accepted exception, and therefore a

kind of already consolidated Constitutional convention (in very relative terms, as this would assume a disagreement with a legal rule referred to by the Constitution and not a direct and indisputable violation of a substantive constitutional provision). Of greater importance is the fact that referenda for approval of amendments to Statutes of Autonomy are constitutionally imposed only in the case of Statutes of Autonomy drafted in accordance with the procedure set down in Article 151 CE, while the remaining Statutes of Autonomy, excluding those with that imposition, can opt to apply the reform procedures under Article 147.3 CE (which in this respect grants these Statutes of Autonomy a wide margin for configuration): these procedures contemplate holding this same referendum for the ratification of the reform prior to the sanction, enactment and publication of the Organic Law formalizing it, or through referenda organized in the phases preceding the review procedure, for example before submitting the text agreed by the Regional Assembly to the National Parliament. This then would be a form of referendum that is different from those contemplated in the Constitution; and consequently, although it could not be held as not subject to the most elemental formalities and procedures regulated by Organic Law 2/1980, the application of that law could be excepted with regard to procedures and formalities that are less necessary for identifying the plebiscite as a true referendum. These would include, with regard to the matter at hand, the formal call by the Head of State, which is less justified when the text submitted for referendum can be approved only by the Parliament of the Autonomous Community.

This being, or possibly being the situation after the issuance of Statutes of Autonomy approved in the form provided in Article 143 CE, i.e. through referenda called by the Autonomous Community, it would not be logical that just those drawn up pursuant to Article 151 CE should require the royal call for a referendum, so long as the body reducing the plurality of State bodies (including the Regional Territories) to a single unity is always assured with the perceptive royal sanction and enactment of the organic laws regarding amendments to Statutes of Autonomy.

With regard to the rest, we must note that the President of each Autonomous Community (appointed by the King pursuant to Article 152.1 CE) is, by constitutional declaration (in the same Article 152.1 CE), the ordinary representative of the State in the Autonomous Community and the person acting in that stead who calls the referendum on amendments to the Statute of Autonomy examined here. This is because, unlike the initiative for its reform, it is not exclusively regional in nature, but rather on behalf of the State, as it is inserted in the ultimate or final stage of adoption of a State rule whose text has already been approved by the Cortes Generales [Article 222.1 d) of the Statute as well as Article 223.1 i) of the Statute of Autonomy]. Consequently, the call is made not as the representative of the Autonomous Community (Article 152.1 CE), but rather in representation of the State (in its other institutional form, pursuant to Article 152.1 CE), which means, more specifically, the King, in the name of the state body, who has been granted this general function [Article 62 c) CE]. As a result, Article 62 c) CE does not represent an obstacle for the Presidents of the Regional Executive to call the referendum on amendments to Statutes of Autonomy; just as there is no constitutional barrier, as the general function of enacting laws is also attributed to the King [Article 62 a) CE], for regional entities to be enacted by the President of the respective Autonomous Community in the King's name. The provisions of the Catalan Statute of Autonomy studied here must be interpreted in this way.

Consequently and based on the foregoing, it must be concluded that the phrasing of Article 62c) CE is not opposed to the calling of referenda on amendments to Statutes of Autonomy by the President of the Regional Executive, always acting in the name of the King, once these have been authorized by the State.

Interpreted in these terms, Articles 222.1 d) and 223.1 i) of the Statute of Autonomy are not contrary to the Constitution, and this will be so stated in the ruling.

RULING

For all of the above, the Constitutional Court, by the authority vested in it by the Constitution of the Spanish Nation,
HAS DECIDED
To uphold in part the petition for a declaration of unconstitutionality submitted by more than fifty Deputies from the People's Party Parliamentary Group against Organic Law 6 dated July 19th, 2006, to amend the Statute of Autonomy of Catalonia and therefore,

DECLARES THAT:

1. The interpretation of the references to "Catalonia as a nation" and to "the national reality of Catalonia" in the preamble of the Statute of Autonomy of Catalonia have no legal effect.
2. The following texts are unconstitutional, and consequently null and void: the expression "and preferential" in Article 6.1; Article 76.4; the phrase "exclusively" Article 78.1; Article 97; Articles 98.2, letters a), b), c), d) and e), and 98.3; the phrases "and with the participation of the Council of Justice of Catalonia" in Articles 95.5 and 95.6; the phrase "the President of the High Court of Catalonia, who chairs the Council" in Article 99.1; Article 100.1; the phrase "or the Council of Justice of Catalonia" in Articles 101.1 and 101.2; the phrase "as principles or lowest common legislative denominators in rules of legal rank, with the exception of those circumstances determined by the Constitution and this Statute of Autonomy" in Article 111; the phrase "the principles, rules and minimum standards established" in Article 120.2; the phrase "the principles, rules and minimum standards established" in Article 126.2; the phrase "provided that they also make a similar fiscal effort" in Article 206.3; and the phrase "may include the legislative capacity to establish and regulate local government taxes" in Article 218.2.
3. The following provisions are not unconstitutional if and when they are interpreted under the terms established in the corresponding Ground indicated: Article 5 (Ground 10); section 2 of Article 6 (Ground 14 b); section 1 of Article 8 (Ground 12); section 5 of Article 33 (Ground 21); Article 34 (Ground 22); section 1 and the first sentence of section 2 in Article 35 (Ground 24); section 5 of Article 50 (Ground 23); Article 90 (Ground 40); sections 3 and 4 of Article 91 (Ground 41); section 2 of Article 95 (Ground 44); Article 110 (Ground 59); Article 112 (Ground 61); Article 122 (Ground 69); section 3 of Article 127 (Ground 73); Article 129 (Ground 76); Article 138 (Ground 83); section 3 of Article 174 (Ground 111); Article 180 (Ground 113); section 1 of Article 183 (Ground 115); section 5 of Article 206 (Ground 134); sections 1 and 2, letters a), b) and d) of Article 210 (Ground 135); section 1, letter d) of Article 222 and section 1, letter i of Article 223 (Ground 147); section 1 of the third additional provision (Ground 138); and the eighth, ninth and tenth additional provisions (Ground 137).
4. The action of unconstitutionality is dismissed in all other cases.
Let this Judgment be published in the Official State Gazette.
This Judgement was handed down in Madrid, June 28 2010.