



ISSN: 2036-5438

Speaking in Name of the Constituent Power: the
Spanish Constitutional Court and the New Catalan

Estatut

by

Giacomo Delledonne

Perspectives on Federalism, Vol. 3, issue 1, 2011





Abstract

In June 2010 the Spanish Constitutional Court rendered a very important judgment on the constitutional legitimacy of the new fundamental charter (*Estatut*) of the Autonomous Community of Catalonia. Faced with a very long and ambitious legal document, the Court succeeded in not condemning as illegitimate most of its controversial provisions by means of interpretation consistent with the Constitution. Thus, those provisions aiming at ‘constitutionalizing’ Catalan identity have been widely neutralized or deprived of their legal significance. By doing so, however, the Court has attracted widespread criticism, possibly paving the way for further conflicts

Key-words:

Spanish Constitutional Court, *Estatut* of Catalonia, Subnational constitutionalism, Identity clauses, Constituent power, Fundamental rights.



1. Introductory Remarks

On 28 June 2010 the Constitutional Court of Spain (*Tribunal Constitucional*, TC) rendered a much-awaited judgment concerning the constitutional legitimacy of a great number of provisions of the new fundamental charter of the Autonomous Community of Catalonia^I. The *Estatuto de Autonomía* (*Estatut*, in Catalan) was approved by the Parliament of Spain in 2006 and soon after confirmed by referendum on 18 June 2006. It has come into force, as *ley orgánica* no. 6/2006, on 9 August 2006. After that, the main opposition party, the right-wing *Partido Popular*, questioned the constitutional legitimacy of the new Catalan charter – almost in its entirety – before the TC. Six other complaints – concerning more specific points – were filed by the national ombudsman (*Defensor del Pueblo*)^{II} and five other Autonomous Communities (Murcia^{III}, La Rioja^{IV}, Aragon^V, Valencian Community^{VI}, and the Balearic Islands^{VII}).

The judgment of the TC can be seen as a milestone in European sub-national constitutionalism^{VIII}. It is a wide-ranging analysis of one of the most significant outcomes of the recent wave of constitution-making in sub-national legal orders throughout Europe. Even if only some of the provisions of the *Estatut* were challenged before the TC, they were the most meaningful and controversial both from a political and symbolic viewpoint. Thus, the judges were inevitably ‘forced’ to develop a complete analysis of the whole text, its place within the Spanish system of sources of law, its relations with the Constitution of Spain, and the balance of power in the Spanish ‘autonomic State’ (*Estado autonómico*). Many questions which the TC had to face in this judgment and in other, less emotional previous decisions were similar to debates conducted in other European countries. It is easy to make comparisons between the arguments used by the TC and the Italian Constitutional Court in some ‘hard cases’ which have arisen during the ‘second wave’ of regional charter-making after 1999^{IX}. The dramatic series of events which led to the publication of the judgment in Summer 2010 put into question the very legitimacy of the Spanish TC and, more broadly, the role of constitutional courts (and their fitness) in solving conflicts in federal or regional systems^X.



2. The New *Estatut* of Catalonia

The new Catalan *Estatut* has been widely regarded as the chief expression of the ‘last wave’ of *Estatutos de Autonomía* in the Autonomous Communities of Spain (CAs)^{XI}. The discussion on whether and how to revise their most important legal documents has concerned both Communities corresponding to ‘historical nationalities’ (*nacionalidades históricas*) and the other, ‘ordinary’ Communities. Because of the manifestly unconstitutional character and the subsequent breakdown of the so-called ‘Ibarretxe Plan’ for a new Basque charter, the Catalan *Estatut* rapidly turned into the cornerstone of the debate concerning the new charters and, more generally, the future of the ‘autonomic State’ established by the Spanish Constitution of 1978.

Catalonia is by far the wealthiest CA in Spain. Leaving aside other peculiar exceptions like the Basque Country, Catalonia’s linguistic identity – based on the Catalan language – is quite distinct from that of the rest of Spain, where Castilian is spoken. Claims for greater political and, significantly, financial autonomy are strongly linked with the resurgence of Catalan identity. According to some scholars, the main reasons for this process are legal, financial and cultural. As for the legal side of Catalan claims, the central State has been progressively eroding Catalan legislative competencies thanks to its exclusive or ‘transversal’ competencies. ‘Identity’ or ‘symbolic’ topics, in turn, have occupied a more and more significant role in political debate ‘due to the non-recognition by the Constitution of 1978 of the existence of national realities alongside the Spanish one’^{XII}.

3. Factual Background: 1. The Drafting of the *Estatut*

In 2003 a left-wing autonomist coalition took office in Catalonia. One of its main electoral pledges was the writing of a fully new *Estatuto de autonomía*. The drafting of a new *Estatuto* was seen as instrumental both in giving Catalonia a ‘real’ constitution and ‘forcing the hand’ of the central State in bilateral negotiations on such sensitive issues as financial relations and judicial organisation. Thus, the drafting of the *Estatut* has been both a constitution-making process and a policy-oriented forum, much in the general tradition of subnational constitutionalism^{XIII}. In 2004 a new national government presided by J.L. Rodríguez Zapatero took office, a national government supposed to be more autonomy-friendly than its conservative predecessor. The *Estatut* was approved in 2006 after a



difficult debate and the search for a compromise between Catalan nationalist parties, on one side, and the State and non-nationalist Catalans, on the other side^{XIV}.

4. Factual Background: 2. The TC facing the Estatut

After that, the leading force in the parliamentary opposition in Madrid, the *Partido Popular* (PP) immediately questioned the constitutional legitimacy of the new Catalan fundamental charter. The Spanish Constitutional Court finally gave its decision at the end of a long-drawn-out deliberation process, during which the very legitimacy of the *Tribunal* was often put into question.

The PP asked the Court to exclude the President of the TC María Emilia Casas Baamonde and Judge Pablo Pérez Trepms from taking part in the decision because they had allegedly been involved in different ways in the preparatory works of the *Estatut*. The *Generalitat* of Catalonia, in turn, did the same with reference to Judges Roberto García-Calvo y Montiel and Jorge Rodríguez-Zapata Pérez. None of these initial applications was successful. However, after a second objection, Judge Pérez Trepms was eventually excluded from taking part in the decision^{XV}. Judge García-Calvo y Montiel died in 2008 and has not been replaced yet.

Four other judges – including the President and the Vice-President of the TC – whose term of office had expired could not be replaced until January 2011. All of these judges had been elected by the Spanish Senate, where a three-fifths majority is required to designate the new constitutional judges. Due to the difficult case which the TC had to deal with and the lack of consensus among political parties, the upper house of the Spanish *Cortes* could not comply with its constitutional task. Furthermore, this procedure was partly revised after the entry into force of some amendments to Article 16(1) of the *ley orgánica* concernig the TC. Nowadays, CAs may propose candidates for the posts of constitutional judge when the Senate – qualified by the Spanish Constitution as ‘chamber of territorial representation’ (Art. 69(1)) – has to choose a replacement for a vacant seat. Thus, the *Cortes* have implicitly coped with a Catalan claim which had been written down at Article 180 of the *Estatut*^{XVI}.



5. The Judgment

From a morphological point of view, this very long *sentencia* has quite a complex structure. It consists of an opinion of the Court, drafted by President María Emilia Casas Baamonde and five individual opinions (*votos particulares*), presented by Judges Vicente Conde Martín de Hijas, Javier Delgado Barrio, Eugeni Gay Montalvo, Jorge Rodríguez-Zapata Pérez, and Ramón Rodríguez Arribas.

As for the content of the judgment, only few provisions in the *Estatut* are recognized as unconstitutional. A greater number of provisions ‘are not unconstitutional, insofar as they are construed’ in accordance with what is stated in the judgment.

Due to space concerns, this analysis of the judgment cannot look into all the legal questions with which the TC has dealt in the opinion of the Court – rather, it will focus on the general theoretical premises of its reasoning and the most relevant complaints concerning the *Estatut*.

The TC has analyzed the *Estatut* from a strictly legal perspective, whose foundations lie in the distinction between constituent power (*poder constituyente*) and legally established powers (*poderes constituidos*): the latter are encompassed by the Constitution, which also determines their scope and meaning^{xvii}. In other words, *Kompetenz-Kompetenz* (*la competencia de la competencia*) only belongs to the Constitution, as construed by the case-law of the TC. The prominent role of the *Tribunal Constitucional* in providing authoritative interpretations of the Constitution and its provisions concerning fundamental rights or the allocation of legislative competencies is insistently stressed in the *sentencia*. As one of the major goals of the *Estatut* is to provide narrow definitions of the legislative competencies of Catalonia (*blindaje competencial*), the TC recognizes that ‘an *Estatuto* may grant legislative competencies in a given subject-matter, but what these ‘competencies’ entail ... is a matter of the Constitution ... As the supreme interpreter of the Constitution, only the *Tribunal Constitucional* is entitled to provide an authoritative – and unquestionable – definition of constitutional categories and precepts^{xviii}. The provisions of the *Estatut* concerning the allocation of legislative competencies (above all, Articles 110 to 112) are ‘constitutionally acceptable insofar as, according to their alleged purpose of describing and accommodating the system, they adapt themselves to the normative and dogmatic reconstruction which can be drawn from our case-law in any historical moment^{xix}’.



The autonomic charters are subject to the Constitution, as always happens with normative acts which are not elaborated by a sovereign power^{xx}. The foundations and the guarantee of the autonomy of Catalonia lie in the Constitution. As the Constitution is the fundamental law in the legal system, it cannot allow any other norm to be other than hierarchically subject to itself.

The other necessary premise concerns the contents of an *Estatuto de autonomía*. Is the *formal* Constitution, as approved in 1978 and subsequently amended, the only possible source of constitutional principles and rules in the legal system? The Catalan *Generalitat* argued in its pleading for a *substantially* constitutional view of *Estatutos*. In fact, said the Court, ‘no legal system lacks legal norms performing functions which, within the normative system, are to be qualified as substantially constitutional, since their goals are conceptually viewed as intrinsic to the fundamental law of any legal system’. Even conceding that, ‘such a qualification has no other scope than a purely doctrinal or academic one’. Although many provisions of the *Estatutos* may have a constitutional flavour, this does not involve a higher normative value for them. This distinction is crucial to the understanding of the *sentencia* no. 31/2010, as it allows the TC to ‘weaken’ many ambitious provisions of the TC ‘from inside’, without formally declaring that they are constitutionally illegitimate.

According to some critics, the TC has not upheld its previous statements on the nature of *Estatutos* in Judgment no. 247/2007, concerning the charter of the Valencian Community^{xxi}. In 2007, the TC had stated that the relation between the Constitution and the *Estatutos de autonomía* is one of subordination as well as mutual integration, since the *Estatutos* are also part of the *bloque de constitucionalidad* which the TC uses to assess the legitimacy of a norm. On that occasion, the TC had also remarked that *Estatutos*, unlike the other kinds of *leyes orgánicas*, are the result of a *complex* procedure, in which both the State and the Autonomous Community are involved. In 2010, however, the TC argued that the *Estatut* is, in fact, a *ley orgánica*, whose relations with the Constitution of 1978 are basically hierarchical. Moreover, ‘constitutional illegitimacy for violation of an *Estatuto* is actually a violation of the Constitution, the only norm able to grant ... competencies^{xxii}’.

As Article 147(2) CE states, there is a necessary, ‘core’ content of the *Estatutos*: denomination, territory, institutional organization and competencies of a given Autonomous Community. According to the Court, ‘This necessary content may be a sufficient content, as well – but the Constitution itself allows to fill the *Estatutos* with



additional contents^{xxiii}. Thus, the TC clarifies that the *Estatutos*, which the Constitution qualifies as ‘basic institutional norms of the Autonomous Communities’ (Article 147(3)), can host additional contents, but they are subordinated to the Constitution and must comply with its provisions. Because of the fundamental distinction between constituent power and constitutional powers, there are some qualitative limitations, ‘affecting the definition of constitutional categories and concepts. Among them, there is the definition of the *Kompetenz-Kompetenz*, which, as an act of sovereignty, is only intrinsic to the Constitution. These limitations cannot be trespassed by any legislator and are only within the reach of the interpretative task of the Constitutional Court^{xxiv}.

As far as substantial questions are concerned, five points are very interesting for the purposes of this note.

First, the Preamble of the *Estatuto* contains an ambiguous statement: ‘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 second Article, recognises the national reality of Catalonia as a nationality’. According to a well established doctrine of the TC, the Preambles in the *Estatutos* have no normative value but only an interpretative one. However, ‘a lack of normative value is no lack of legal value’ – therefore, the Court has to deal with these ‘concepts and categories which ... seek to give the *Estatuto* foundations and a scope incompatible with its condition of subordination with respect to the Constitution^{xxv}. As a result of this challenge, the TC stated that the most controversial passages of the Preamble had no interpretative value. Whilst a group is entitled to call itself a nation for the purposes of political or cultural debate, when it comes to legal language there is only one nation in the Kingdom of Spain, the Spanish nation. On the contrary, Catalans are just a ‘nationality’ (Article 2 of the Spanish Constitution and Article 1(2) of the Catalanian *Estatut*)^{xxvi}. This argumentation also affects the problem of the allocation of sovereignty in Spain: thus, since the Spanish legal system is based on the principle of popular sovereignty, the only holder of sovereignty can be the Spanish people at large. The judicial treatment of the provisions affecting language rights can be analyzed against this framework, as well. Article 3 of the Spanish Constitution allows the Autonomous Communities to give their local languages an official status alongside Castilian, ‘the official Spanish language of the State’. Thus, the provisions of the *Estatut* on the co-official status of Castilian and Catalan are plainly legitimate. The only



unconstitutional norm is that providing for the ‘preferential use [of the Catalan language] in Public Administration bodies’ (Article 6(1)), whilst Catalan can indeed be ‘the language of normal use for teaching and learning in the education system’ ‘insofar as this does not involve the exclusion of Castilian as teaching language’^{xxvii}. The approach of the TC seems clear: any norms which may appear a legal contribution to the building up of a Catalan nation, if they cannot be interpreted consistently with the Constitution, are illegitimate or without legal value.

Second, as for the legitimising force of Catalan autonomy, the Preamble says 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 *Estatuto* of the unique position of the *Generalitat*’. Again, interpretations claiming that the Catalonian autonomy has foundations other than the provisions of the Spanish constitution have to be rebutted. The legal foundations of autonomy are the constitutional provisions concerning the territorial organisation of the Kingdom of Spain. In fact, two CAs, Navarre and the Basque Country, enjoy a privileged financial status due to some historical rights (the so-called *derechos forales*) – these rights, however, are explicitly mentioned (and recognised) in the Constitution (Article 149(1)(8)). As the Court stated, ‘Only in an improper way could these historical rights be intended to be, even legally, the foundation of Catalonian self-government, because ... they can only explain the fact that *Estatutos* take up some determined competencies in accordance with the Constitution, but they cannot at all explain the foundation of the legal existence of the Autonomous Community of Catalonia and its constitutional entitlement to self-government’^{xxviii}.

Third, the *Estatuto* contains a detailed bill of rights. In 2007, the TC had already laid down that the provisions of *Estatuti* concerning rights were not fundamental rights but only directive propositions needing ordinary legislation to be implemented^{xxix}. In 2010 the Court held again that ‘To be rigorous, fundamental rights are only those rights which limit every legislature, i.e. the *Cortes Generales* and the legislative assemblies of the Autonomous Communities, in order to guarantee freedom and equality. This function of limit can only be performed by a superior norm which is common to every legislature, i.e. by the Constitution’^{xxx}. In the TC’s view, this assumption is confirmed by Article 37(4) of the *Estatuto*, according to which:



'The rights and principles of this Title shall not imply any alteration to the system for distribution of powers nor the creation of new Titles regarding powers nor the modification of those that already exist. None of the provisions of this Title shall be enacted, applied or interpreted in any way that reduces or restricts the fundamental rights recognised in the Constitution and in international treaties and conventions ratified by Spain'.

Therefore, the global meaning of the Catalan bill of rights is greatly diminished. Two other aspects of the judgment are worth recalling. The treatment of the provisions concerning the allocation of legislative competencies, the Catalan judiciary and financial arrangements is striking. These are perhaps the most 'political' provisions in the *Estatut*, aiming at conditioning the national debate on judicial and financial topics towards a significant 'autonomization' of both of them. In fact, the *ley orgánica* no. 3/2009, revising the LOFCA (*Ley orgánica* on the financing of Autonomous Communities), has been prompted by the 'last wave' of *Estatutos de autonomía*^{xxxI}. Most of the provisions of the *Estatut* concerning those subjects have not been condemned by the TC as illegitimate because those provisions are ultimately not able to regulate them – the Constitution says that a *ley orgánica*, stemming from the State legislature, is necessary. Thus, many provisions of the *Estatut* are not properly preceptive statements – rather, they express some political claims of the Catalan *Generalitat*.

As far as financial arrangements are concerned, it is worth pointing out that Catalan attempts at providing a unilateral (re-)definition of the financial regime of the Autonomous Community fatally clash with the fundamental role of the State in this domain^{xxxII}. This is a very interesting point, which also illuminates a distinctive feature of contemporary fiscal federalism in most jurisdictions around the world.

As for judicial and constitutional review, the Court makes a fundamental point: 'it is self-evident ... that one of the defining traits of the autonomic State, insofar as it is different from the federal State, is that its functional and organic pluralism does not affect the judiciary at all. In the autonomic State, the diversification of the legal system, resulting in more autonomous normative systems, does not take place at the constitutional level – entailing the existence of more constitutions ... Conversely, it only starts at the level of ordinary laws, in presence of one national constitution'^{xxxIII}. Thus, even if the practical operation of the Spanish federalizing process has gone well beyond a mere autonomic frame, the traditional scholarly distinction between federal systems and autonomous (or



regional) ones is still relevant to the self-understanding of the system^{xxxiv}. In the light of these considerations, the deliberations of the *Consell de Garanties Estatutàries* (Council for Statutory Guarantees) cannot bind the legislature – the *Consell* cannot aim at becoming a sort of Constitutional Court of Catalonia^{xxxv}. Since the Spanish legal system has just one Constitution, there can be only one Constitutional Court. Correspondingly, the provisions of the *Estatut* concerning the High Court of Justice of Catalonia and the Council of Justice of Catalonia are not illegitimate ‘insofar as’ those organs can be viewed as decentralized branches of the (unitary) state judicial systems.

6. Assessing the Judgment

Sentencia no. 31/2010 is clearly the result of a compromise between very different states of mind within the *Tribunal Constitucional*. Whereas some judges aimed at declaring the full illegitimacy of the *Estatut*, others were reluctant to be too aggressive towards it, fearing a dangerous overinvolvement of the TC in political questions. However, this compromise has undergone widespread criticism. The magnitude of the conflict is witnessed e.g. by the dissenting opinion of Judge Jorge Rodríguez-Zapata Pérez:

‘The Estatut takes the place of the constituent legislator and modifies the Constitution without conforming to the [constitutional] procedures; it incurs in a colossal flaw of incompetency overthrowing the division of power between the State and the Autonomous Communities in every domain; it harms the human dignity of all Spaniards affecting their rights, above all their right ... to use in Spain the Spanish official language of the State; lastly, it upsets the constitutional system of sources of law and, at the same time, the operation of the State itself.’

Some commentators have stressed the particular significance of this judgment in defining the role of the TC within the Spanish legal system. The TC is a constitutional power (*poder constituido*), too. Still, it tends to behave like a commissary of the constituent power (*comisario del poder constituyente*), as Eduardo García de Enterría once suggested^{xxxvi}. Others have argued that the judgment reveals a lack of deference by the TC towards the *complex legislator* entrusted with enacting *Estatutos de autonomía* – a complex procedure in which the Catalan Parliament, the national *Cortes Generales* and the people of Catalonia had taken part^{xxxvii}.



In fact, the TC seems to have paid dearly for its attempt at ‘rescuing’ many provisions of the *Estatut* by means of interpretation “consistent with the Constitution.”. One scholar argued that the TC might not have been exercising its power within the scope of constitutional review, ‘i.e., with the highest deference towards the legislative’^{xxxviii}.

This criticism cannot be entirely rejected. The TC tried to stop a serious political conflict, whose magnitude is reflected by the contestations over the fitness of many members of the TC itself to deal with the case. However, in overemphasizing its monopoly of constitutional interpretation it adopted a questionable strategy. Whereas many provisions of the *Estatuto* dynamically reflect ‘hard’ constitutional and political debates – concerning e.g. the Catalan identity, language rights, or financial resources – the TC has tried to provide a solid, basically stable interpretation of those norms. It has searched for a viable compromise, so as to avoid a serious clash with the State or Catalonia. By doing so, however, it has perhaps invaded an area where political negotiations between institutional levels should hold sway. The hard political conflict before the final approval of the *Estatut* could hardly be solved by a constitutional court, whose chief mission is to evaluate the *constitutional* – neither historical, nor political – legitimacy of *legal* norms. Furthermore, the conflict might have only been postponed. Even if the Preamble of the *Estatut* has no legal value and its ‘bill of rights’ merely contains ‘directive norms’, they could form the basis for regional legislation which could clash with the Spanish Constitution. Thus, the ‘basic institutional norm’ of Catalonia continues containing a latent source of possible legal conflicts.

In conclusion, the TC faced a serious challenge between 2006 and 2010, whose solution has led some scholars and a part of the public to question its very legitimacy. Only in the long run, however, can the sustainability of its hard-fought *sentencia* be verified.

^I See the *sentencia* no. 31/2010, available at <http://www.tribunalconstitucional.es/en/jurisprudencia/Pages/Sentencia.aspx?cod=9873>. See Castellà Andreu 2010.

^{II} See the *sentencia* no. 137/2010, issued on 16 December 2010.

^{III} See the *sentencia* no. 49/2010, issued on 29 September 2010.

^{IV} See the *sentencia* no. 138/2010, issued on 16 December 2010.

^V See the *sentencia* no. 46/2010, issued on 8 September 2010.

^{VI} See the *sentencia* no. 48/2010, issued on 9 September 2010.

^{VII} See the *sentencia* no. 47/2010, issued on 8 September 2010.



- ^{VIII} See Gardner 2008; Ginsburg and Posner 2010. Both contributions strongly stress differences between an ‘American’ and a ‘European’ model in sub-national constitutionalism.
- ^{IX} See the *sentenze* of the Italian Constitutional Court no. 106/2002, 372/2004, 378/2004, 379/2004, 365/2007, 170/2010. See also Delledonne and Martinico 2009.
- ^X See. Carrozza, 1989.
- ^{XI} For a detailed analysis of this process, see Martinico 2010. See also Ruggiu 2007.
- ^{XII} See Viver Pi-Sunyer 2009. See also Castellà Andreu 2008: 219.
- ^{XIII} See Williams, 2009.
- ^{XIV} See Article 147(3) of the Spanish Constitution: ‘Amendment of *Estatutos de autonomía*, shall conform to the procedure established therein and shall in any case require approval of the *Cortes Generales* through an organic act (*ley orgánica*)’. According to Article 56(1) of the Catalan *Estatuto* of 1979, in turn, ‘Reform of the *Estatuto* will comply with the following procedure: a. The reform initiative may come from the Executive council or Government of Catalonia, the Parliament of Catalonia in the form of a proposal by one fifth of its members, or the Spanish Parliament. b. In all cases, the reform proposal will require approval by a two-thirds majority of the Parliament of Catalonia, approval by the Spanish Parliament in the form of an Act of Parliament and, finally, a positive result in a referendum of electors’.
- ^{XV} See the *auto* no. 26/2007, issued on 5 February 2007. See also Delgado del Rincón 2008; Iacometti 2007.
- ^{XVI} ‘The *Generalitat* participates in the processes for the designation of magistrates of the Constitutional Court and members of the General Council of Judicial Power in the terms established by law, or where appropriate, by parliamentary regulations.’
- ^{XVII} Spanish Constitutional Court, *sentencia* no. 76/1983.
- ^{XVIII} Spanish Constitutional Court, *sentencia* no. 31/2010, par. 57.
- ^{XIX} Spanish Constitutional Court, *sentencia* no. 31/2010, par. 58.
- ^{XX} Spanish Constitutional Court, *sentencia* no. 31/2010, par. 3.
- ^{XXI} See Vintró Castells, 2010.
- ^{XXII} Spanish Constitutional Court, *sentencia* no. 31/2010, par. 4.
- ^{XXIII} Spanish Constitutional Court, *sentencia* no. 31/2010, par. 4.
- ^{XXIV} Spanish Constitutional Court, *sentencia* no. 31/2010, par. 6.
- ^{XXV} Spanish Constitutional Court, *sentencia* no. 31/2010, par. 7.
- ^{XXVI} *Ibidem*.
- ^{XXVII} Spanish Constitutional Court, *sentencia* no. 31/2010, par. 24.
- ^{XXVIII} Spanish Constitutional Court, *sentencia* no. 31/2010, par. 10.
- ^{XXIX} Spanish Constitutional Court, *sentencia* no. 247/2007, available at: <http://www.tribunalconstitucional.es>.
- ^{XXX} Spanish Constitutional Court, *sentencia* no. 31/2010, par. 16.
- ^{XXXI} See Carboni 2010.
- ^{XXXII} Spanish Constitutional Court, *sentencia* no. 31/2010, pa. 130.
- ^{XXXIII} Spanish Constitutional Court, *sentencia* no. 31/2010, par. 42.
- ^{XXXIV} See also Italian Constitutional Court, *sentenza* no. 365/2007.
- ^{XXXV} Spanish Constitutional Court, *sentencia* no. 31/2010, par. 32.
- ^{XXXVI} See Aparicio Pérez 2010: 3; Barceló i Serramalera 2010: 1.
- ^{XXXVII} See Barceló i Serramalera 2010; Vintró Castells 2010.
- ^{XXXVIII} Vintró Castells 2010:1

References

- Aja Eliseo, 2007, ‘La riforma dello Statuto catalano del 2006’, in *Diritto pubblico comparato ed europeo*, IX(3): 1133-1154.
- Aparicio Pérez Miguel Ángel, 2010, ‘Alguna consideración sobre la STC 31/2007 [sic] y el rol atribuido al Tribunal Constitucional’, in *Revista catalana de dret públic, Especial Sentència sobre l'Estatut*, available at http://www10.gencat.net/eapc_revistadret/recursos_interes/especial%20estatut/documents%20especial%20estatut/document.2010-07-15.7236299341/ca.
- Barceló i Serramalera Mercè, 2010, ‘Breus consideracions sobre la STC 31/2010’, in *Revista catalana de dret públic, Especial Sentència sobre l'Estatut*, available at





http://www10.gencat.net/eapc_revistadret/recursos_interes/especial%20estatut/documents%20especial%20estatut/document.2010-07-15.7236299341/ca.

- Blanco Valdés Roberto L., 2006, 'Lo Statuto catalano: testo e pre-testi', *Quaderni costituzionali*, XXVI(4): 677-695.
- Carboni Giuliana Giuseppina, 2010, 'Il federalismo fiscale dinamico in Spagna', available at <http://www.federalismi.it>.
- Carrozza Paolo, 1989, 'Principio di collaborazione e sistema delle garanzie procedurali (la via italiana al regionalismo cooperativo)', in *Le Regioni*, XIV(2): 473-509.
- Castellà Andreu Josep Maria, 2008, 'Lo Statuto di autonomia del 2006 come (discutibile) strumento per la realizzazione dell'autogoverno della Catalogna', in Gambino Silvio (ed.), *Regionalismi e Statuti. Le riforme in Spagna e in Italia*, Giuffrè, Milano, 219-244.
- Castellà Andreu Josep Maria, 2010, 'La sentencia del Tribunal Constitucional 31/2010, sobre el Estatuto de Autonomía de Cataluña y su significado para el futuro del Estado autonómico', available at http://www.funciva.org/uploads/ficheros_documentos/1284366523_sentencia_del_tc_josep_maria_castella.pdf.
- Delgado del Rincón Luis E., 2008, 'La recusación de los magistrados del Tribunal Constitucional', in *Revista Española de Derecho Constitucional*, XXVIII(82): 347-393.
- Delledonne Giacomo and Martinico Giuseppe, 2009, 'Handle with Care! The Regional Charters and Italian Constitutionalism's 'Grey Zone'', in *European Constitutional Law Review*, V(2): 218-236.
- Gardner James A., 2008, 'In Search of Sub-National Constitutionalism', in *European Constitutional Law Review*, IV(2): 325-343.
- Ginsburg Tom and Posner Eric A., 2010, 'Subconstitutionalism', in *Stanford Law Review*, LXII(6): 1583-1628.
- Häberle Peter, 2008, 'Juristische Kultur in Katalonien', in *Jahrbuch des öffentlichen Rechts der Gegenwart*, new series, LVI: 503-521.
- Iacometti Myriam, 2007, 'Ricusazioni 'a raffica' per il Tribunal Constitucional', *Diritto pubblico comparato ed europeo*, IX(2): 1031-1051.
- Martinico Giuseppe, 2010, 'The new 'Estatutos de Autonomía' in Spain: a brief overview of the literature', in *Perspectives on Federalism*, II(1) (http://www.on-federalism.eu/attachments/058_download.pdf).
- Pérez Fernández Juan Manuel, 2010, 'La tutela de las lenguas regionales o minoritarias estatutarias y su encaje en el modelo constitucional español: ¿un *tertium genus* en el reconocimiento de los derechos lingüísticos?', in *Revista Española de Derecho Constitucional*, XXX(89): 157-191.
- Ruggiu Ilenia, 2007, 'Testi giuridici e identità. Il caso dei nuovi Statuti spagnoli', in *Le istituzioni del federalismo*, XI(2): 133-192.
- Vintró Castells Joan, 2010, 'Valoración general de la STC 31/2010', in *Revista catalana de dret públic, Especial Sentència sobre l'Estatut*, available at http://www10.gencat.net/eapc_revistadret/recursos_interes/especial%20estatut/documents%20especial%20estatut/document.2010-07-15.7236299341/ca.
- Viver Pi-Sunyer Carles, 2008, 'La riforma dello Statuto della Comunità autonoma di Catalogna: principali novità e problemi di costituzionalità', in *Diritto e società*, XXXVI(3): 315-349.
- Williams Robert F., 2009, *The Law of American State Constitutions*, OUP, Oxford.