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THE RIGHT OF PARLAMENTARIANS TO ACCESS INFORMATION: JURISPRUDENCE DEVELOPMENTS AND LEGISLATIVE CHANGES

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The Regulations of the Spanish national and regional Parliaments have always included a provision that recognizes the individual right of parliamentarians to request the Administration to provide the necessary information for the proper exercise of their parliamentary duties.

The Constitutional Court's jurisprudence understands this right as part of the parliamentarians' *ius in officium* and, as a consequence, as a fundamental right falling within the scope of Article 23.2 of the Constitution and including the right not only to request information but also to receive it (Judgment of the Constitutional Court 203/2001). However, the legal safeguards when Governments and Administrations have failed to comply with their duty have been scarce. This is due to two factors. The first one is the fact that Parliament lacks effective instruments. The second one, the constitutional jurisprudence itself: since its Judgment 220/1991 the Court has argued that, when the requested institution fails to give information, it can only be controlled in the framework of the relations between Government and Parliament. The latter point has made the contentious jurisdiction refuse to take part in the resolution of the case.

Despite all this, the lack of safeguards has undergone some changes thanks to two elements. Firstly, the courts' judgments have evolved as shown by the Judgment of the High Court of Justice of the Community of Valencia, of 29 April 2011, and confirmed by the Judgment of the Supreme Court, of 25 February 2013. To put it briefly, these judgments recognize the protection of the right of access to information by means of the preferential and summary procedure laid down by Article 53.2 of the Constitution and ultimately through the individual appeal for protection against violation of the rights contained in the previous article pursuant to Articles 161 and 162 of the Constitution. In addition, recent national and regional laws on transparency and citizen access to information have influenced the provisions regulating the functioning of Parliaments. In this sense, the Regulation on the Parliament of Catalonia, as amended in July 2015, has been the first one to establish a specific legal framework for the right at issue.

The new regulation is contained in Articles 6 to 10 of the Regulation. It is important to analyze three aspects: the conditions for the exercise of the right, limits and safeguards.

As regards the first matter, the position of parliamentarians is now reinforced. In the first place, because their individual right can now be directly exercised, meaning that it does not need to be notified to the parliamentary group, let alone accepted by these; it does not require the compulsory intervention of the Bureau of Parliament or the President, and the interested party can directly go to the Administration concerned and request the information accompanied by a maximum of three advisors.

The limits of this right are not expressly laid down by the Regulation. Instead, it refers to the limits established by the specific legislation on the right of access to information. The mentioned legislation is the Catalan Law 19/2014, without prejudice to an integrating interpretation through the national Law 19/2013 when needed. For these reasons the Administration concerned will have to allege these reasons, and only these, when rejecting the request of a parliamentarian. The Regulation adds that this right is preferential and includes some weighing criteria against other rights.

As regards the legal safeguards when the Administration fails to provide the requested information, the Regulation includes three different safeguards. Firstly, the parliamentarian may require the Bureau of Parliament to address to the non-performing Administration a formal request including its opinion on the case based on legal grounds. Secondly, the parliamentarian may use, in addition to the previous safeguard, the general mechanisms laid down by transparency laws. Finally, two other instruments can also be used: questions to the Plenary and commission resolutions. Non-performance may also give rise to the sanctions laid down by transparency laws.

The first safeguard is without a doubt the most interesting and groundbreaking one. The declaration of the Bureau of Parliament on the legal grounds of the case requires a previous report of the body specifically created to safeguard the right of access to information (Article 215 of the Regulation of the Parliament). This report is binding if it gives favorable consideration to the parliamentarian's request. In this case, the decision of the Bureau shall be notified to the Administration concerned so that this can immediately fulfill its duty.

As a conclusion it must be remembered that, as stated above, the right at issue is a fundamental right and those decisions hampering its exercise may give rise to an individual appeal for protection before the Constitutional Court (if the decisions are made by the Bureau of Parliament) or to the preferential and summary procedure before the contentious jurisdiction and subsequently before the Constitutional Court (if they are made by the Administration).