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› PRESENTATION

Ladies and gentlemen,

I would like to thank you once again for your very positive response to our invitation and for meeting here today, in an extended study and discussion session, at the 10th Anniversary of the Constitutional Court of the Principality of Andorra.

This is, without a doubt, the largest concentration of legal expertise ever seen in these valleys since 1748, when Dr Fiter y Rossell, working on his own in the Parish of Ordino, which we will visit this afternoon, made a compilation of Andorran customs in the Manual Digest.

The present Andorran constitution is no improvisation. The Andorran people, it could be said paraphrasing Mirabeau at the French Constituent Assembly of 1790, were not, ten years ago, "a nation newly arrived by chance on the banks of the Orinoco," and ready to invent their institutions. Andorrans are an ancient people and their existence as a different political body goes back, at least, to the donation by the Count of Urgell to the Episcopal See of this name of the dominion over the Valleys of Andorra in 1113 and, in any event, to the Pareatges of 1278, based on which the co-principality between the Count of Foix and the Bishop of Urgell exists.

Since then, Andorra's identity as a political body and the maintenance of it through numerous historical ups and downs was the result of both the nation's conscience and its happy composition with the personal co-sovereignty of the French Head of State –King, Emperor, or President, heir of the Counts of Foix, whose coat of arms is still used today by the French co-prince – and the Bishop of Urgell. But the fruit of such a unique situation continued to ripen throughout a historical development which was always lead by the Co-principality and always with the participation of the majority of Andorrans in its secular institutions, leading to what is the aptly-named "third co-prince": the Andorran people themselves. There are those who say that this democratising evolution originates from the Pareatges of 1278; but it is clear, at least since the creation in 1419 of the Consell de la Terra (Land Council), converted on the basis of a wider electorate into the General Council of the New Reform of 1866-1868. The reforms of 1933, 1946, 1970 and 1973 are examples of other milestones along the same path.

During the period of the most recent reforms, which spanned from 1973 to 1993, the fundamental elements were established so that Andorra, which was always a Community, as was obvious from the constant presence of Notaries Public from 1288, was also a State. As Otto Mayer said in Wilhelm's Germany and Garrido Falla in authoritarian Spain, administrative law was the school of freedom and the recognition and guarantee of the legal position of the administrated paved the way for the establishment of citizens' rights. Consequently, in 1993 a tri-party commission, some of whose members are now magistrates of the Constitutional Court and are with us here today, drew up the present Constitution, which was the culmination of the process: the Andorran people took on their full sovereignty and used it to recognise and ensure fundamental rights, so giving themselves a modern Constitution which renewed traditional institutions according to patterns of broad territorial decentralisation and parliamentary co-principality as the form of government. In doing so, Andorra cleared away any doctrinal doubts regarding its situation as a state and, by bringing to life the well-known theses of the renowned Austrian Professor Zemanék, it took up its position in the international community.

As you will all know from your own experience, continental Europe, to which all of us here belong, has evolved towards a specific system of constitutional law, not developed in equal measure in all European Council member countries, and which is the one adopted in its entirety by the Andorran Constitution. If constitutional justice, which is the application of the Constitution as a regulation of the system, is a diffuse function exercised by all courts, constitutional jurisdiction focuses on the Court of that name. In Andorra, this comprises four magistrates appointed for eight years, one for each Co-prince, and another two by the General Council, which is in fact the Parliament, with a rotating presidency which changes every two years. In line with the experience of other micro-states, the magistrates can be foreigners, so ensuring its complete independence in a tiny society. My colleagues and I, like those who have gone before us in this Court, are honoured for having been deemed worthy of the trust of Andorra and for having been able to provide this service to its people.

The Andorran Constitution, as one of Europe's youngest constitutions, which could repeat the words of Goethe and "be serenely happy when it sees itself at the end of such a beautiful thread " gained a wealth of experience and entrusted this Court with the three functions characteristic of the European system of constitutional jurisdiction and which correspond to three other genetic features of this system.

First, to ensure the supremacy of the Constitution by means of judicial review of the law and of regulations of a legal order. This is the classic judicial review which was introduced by case law in the United States after Marshall and which, through Kelsen's influence, would rationalise the Austrian Constitution of 1920 and, based on it, many others which would surpass

the limitations of the Kelsenian model. Direct appeals to be lodged by Members of Parliament, the Government and three Commons and the issue of unconstitutionality to be raised by the ordinary courts are the suitable means for this, which the Constituent of Andorra took from the Spanish Constitution of 1978, in turn the result of what Professor Cruz Villalón has called the reception of Fundamental German Law in Spain. To this we must add the prior ruling on the constitutionality of laws and treaties attributed to the Co-princes. This is an instrument which I attribute to the influence of the French Constitution of 1958 and which, in my opinion, is a happy composition of the political defence with the legal defence of the Constitution, an appropriate form of the role of arbiter attributed to the leadership of the parliamentary state and which, unfortunately, I was not able to introduce into the Spanish Constitution, one of whose creators I am.

Second, to resolve, through correct constitutional interpretation, the conflicts of powers and attributions among the holders of powers. This is a direct consequence of the above, but it refers to different origins – what doctrine has called "political jurisdiction" and which in Central Europe has a definite "Ancien Régime" background – and is implemented through the conflicts of powers among the constitutional bodies, understood as such to be the Co-princes, the General Council, the Supreme Court of Justice and the Commons.

Third, the appeal for legal protection. This procedural instrument, with a Mexican name but whose origins can be traced back to the Paulskirche constitutional bill of 1848, which allows appeals to be lodged before the Court against any act by public powers which violates fundamental rights that are recognised in the Constitution and which transforms this Court into what, half a century ago, Capalletti called a "constitutional jurisdiction of freedom".

During the ten-year life of the Constitution and of the working of this Court, all these instruments have been used, leading to 208 rulings, of which 58 (48 sentences and 3 proceedings) created precedent. Yesterday, we sent you a summary of the so-coined case law doctrine and which has a special value for Andorra because not only does it link all State bodies, but it also links the Court itself which, only by motivating it, can separate itself from the doctrine established by it. This has enabled a case law to be created which, in certain cases, has influenced that of other European Constitutional Courts represented here, which is an extraordinary honour for us.

There are three consequences to all of this.

First, the Constitution, the supreme regulation of the State, is not so much its text as its text according to how the Constitutional Court interprets it. This is evident when referring to fundamental rights. Consequently, that it should be understood as due process, a law established in Article 10 of the Constitution, is an undertaking which keeps the Court permanently occupied. But the same can be said of family and filiation protection, of the right to free movement and residency or free enterprise. The regulations contained in Articles 13, 21, 22, 28 and 32, for example, is none other than what the Court has said it is. Yet the same occurs with the definition of the very form of Government in Article 1,4 or of the functions of the General Council in Article 50.

Second, the Constitution has been introduced into Andorrans' daily life and in particular into their legal life. Thanks to the appeal for legal protection, the Court has carried out intense constitutional education of all legal operators, the success of which can be seen in that the appeals lodged, undoubtedly the greatest number of appeals, have not flooded the Court as occurs in other European countries with a similar system, and that the number of these appeals has even stabilised because the constitutional values which legal protection has to ensure are safeguarded by constitutional justice carried out by ordinary jurisdiction, making intervention by constitutional jurisdiction unnecessary. This has helped, on the one hand, to deepen constitutional sentiment in the nation and, on the other, to stop protection from transforming the Constitutional Court into a universal court of last resort. Something which would have denaturalised it, but which is a greater threat in a country like Andorra where the Constitution is the sole unifying instance of the system, not only because it is situated at the very top of the regulation pyramid, but because there is no general Civil Code.

Third, the Court takes on a capital role in the political-legal system. It is not only supreme in its mandate, with all the consequences which Kelsen attributed to this position, but it is also the only fully independent, unimpeachable body with universal power invested in it, which only it is given to interpret. Without a doubt, the legislator may amend the Classified Law of the Court, but the Andorran Constitution, like that of many other European countries, is sufficiently explicit when it comes to regulating this body, so that the composition, functioning and powers of this Court escape the actions of the ordinary legislator.

This leads us to consider the potential and also the dangers of a constitutional jurisdiction which, except for constitutional reform, does in fact have the power of competence itself. However, meanwhile, it imposes on this Court, like its European counterparts, a great responsibility and self-restriction so that it does not interfere in the purely political sphere whatever its legal apparel may be. If constitutional jurisdiction must avoid becoming the universal Court of last resort, neither can it be a type of legislative review chamber.

However, because the values established in the Constitution and the institutional checks and balances also established have an eminently political content – politics is the skeleton of the body whose skin is the Constitution, in the words of Rector Triepel – a Constitutional Court is, nowadays, to use the venerable term above, the jurisdiction of the political aspect par excellence. Clear proof of this is the care which the comparative constitutional jurisprudence has had to bring to such a political matter which concerns us all: minorities. An issue of particular relevance at the moment in the globalised, multicultural world in which we live and hugely important for such a fragile identity as that of micro-states.

In line with the programme which you all have, we are going to explain and debate the papers which have been given until now, arranged according to the programme order. The presentation of each group of papers will be followed by a general debate on the points raised in them. One of the Andorran magistrates will take on the role of moderator and another that of speaker for each working session to draw up a summary of each of these sessions. We will follow the Chatham House standards. This is a true reproduction of views without the attribution of the authorship and without final conclusions. We will send you the results of all this.