



CONSTITUTIONAL COURT OF SPAIN
Cabinet of the President
Press Office

PRESS RELEASE No. 81/2016

THE CONSTITUTIONAL COURT UNANIMOUSLY AGREES ON INFORMING THE PUBLIC PROSECUTION ABOUT THE PERFORMANCE OF THE PRESIDENT OF THE PARLIAMENT OF CATALONIA IN ORDER TO ESTABLISH HER CRIMINAL RESPONSABILITY FOR NOT COMPLYING THE COURT'S DECISION THAT NULLIFIES THE 236/XI RESOLUTION

The Plenum of the Constitutional Court unanimously agreed on sustaining the execution issue submitted by the Government Attorneys Office referring Resolution 263/XI, passed by the Parliament of Catalonia the 27th July. This Resolution ratifies the report and conclusions of the Study Commission for the Constituent Process supporting the continuation of the creation of the State of Catalonia which had been previously declared unconstitutional by the Court. The assertion of the execution issue involves, on the one hand, the nullity of the 263/XI Resolution, because it violates the Constitution. On the other hand, individuals might be called by the Public Prosecution to testify on the President of the Catalanian Parliament, Carme Forcadell performance and, eventually, on the performance of whoever breaches his duty to comply the Court decisions. The Constitutional Court does not reckon itself as the one entitled to resolve about Forcadell's eventual criminal responsibility. However, it is entitled to inform the Public Prosecution Office so that the latter may if convenient initiate a criminal prosecution.

The facts that prompted the present execution issue are:

1. The 2d December 2015, the Court pronounced the Judgment 259/2015 declaring the unconstitutionality and the nullity of the 1/XI Resolution, 9th November 2015 of the Parliament of Catalonia about the beginning of the political process in Catalonia in line with election results on 27th September 2015.
2. The 19th December 2015, the Court pronounced the 141/2016 Order sustaining the execution issue of the 5/XI Resolution, 20th January 2016, about the creation of the Study Commission of the Constituent Process promoted by the Government Attorneys Office. The Plenum declared the nullity because it understood that this Resolution breached the 259/2015 Judgment. Moreover, the Court warns specifically *"the authorities involved such as the Bureau of the Parliament of Catalonia about their duty to deter any initiative intended to shirk"* the Court mandates.
3. The 27th July 2016, the Plenum of the Parliament of Catalonia passed the 263/XI Resolution that ratified the report and the conclusions of the Study Commission. The voting on the Plenum of the Parliament took place after the President changed the agenda to add the proposal of two parliamentary groups.

The Government Attorneys Office formulated the present execution issue and requested the Constitutional Court to declare the nullity of the 263/XI Resolution because it breached the order and the judgment. Previously, the Government Attorneys Office had requested the Court to inform the Public Prosecution about the performance of the President of the Parliament of Catalonia, Carme Forcadell, in order to determine eventual criminal responsibilities.

Before deepening into the execution issue, the Plenum responded to the allegations of the Parliament of Catalonia. The counsels of the Autonomous Parliament urged utmost caution in the implementation of the new measures of art. 92 of the Organic Law of the Constitutional Court, given that the actions of unconstitutionality against these measures remained still unsolved. In this regard, the Court reminds that *“before and after the reform, all public authorities are obliged to comply with whatever the Constitutional Court decides”*. Likewise, the Court pointed out that *“it already had the power to decide on any executive measure”* such as, requiring individuals to testify in case of an eventual criminal responsibility of the public authorities or civil servants for breaching the Constitutional Court mandates. *“This Court –concludes- has always counted on the powers to ensure the compliance of its decisions, regardless the absence of its need so far”*.

The Court considered that the Parliament of Catalonia *“shirks the mandates”* and *“ignores the warnings”* covered by the Judgment and the Order previously mentioned having passed the 263/XI Resolution of 27th July and ratifying the report and the conclusions of the Study Commission. The Court argued that the Resolution *“intends to follow up and support the so-called ‘constituent process in Catalonia’, aimed to its disengagement of the Spanish State”*. The Court explains that the 263/XI Resolution has *“legal consequences by itself and not only political ones”*, since it is implied *“the acknowledgement, to the Parliament or the people of Catalonia, of superior sovereignty powers than the ones derived from their self-government granted by the Constitution”*. The Resolution insists on introducing in our legal system *“the ‘constituent process’ in Catalonia, aimed to create an independent State of Catalonia (republic) in an apparently lawful way”* against the mandates of the Constitution of 1978 and the Statute of Autonomy of Catalonia.

The Parliament of Catalonia could raise the debate about *“proposals intended to modify the basis of the constitutional order itself”*. However, it could only be presented under *“the Constitution reform process framework”*. The Plenum pointed out that *neither “the democratic legitimacy of the Parliament of Catalonia ‘can go against the unconditional primacy of the Constitution”*. Nor the Parliament of Catalonia *“can use the parliamentary autonomy as an excuse to arrogate to itself the power to violate the constitutional order”*.

The 263/XI Resolution, subject of the execution issue, *“translates the desire of the majority of the Parliament of Catalonia to shirk the constitutional reform process to prosecute its political project of disengagement of the Spanish State”*. This means *“trying an unacceptable action de facto basis (incompatible with the social and democratic rule of Law proclaimed in the art. 1.1 of the Constitution) to reform the Constitution or, at least, to achieve its ineffectiveness”*. Moreover, *“it contravenes and undermines directly the mandates”* of the Court.

Thus, the Plenum sustained the execution issue and declared the unconstitutionality and nullity of the Resolution 263/XI, passed by the Parliament of Catalonia the 27th July 2016.

Secondly, the Plenum answered the requirement of the Government Attorneys Office to call the President of the Parliament of Catalonia, Carme Forcadell, to testify.

The Plenum considered that the sequence of events has proven the *“aim”* of the Parliament *“to contravene the decisions of the Constitutional Court”*. In spite of the warnings covered in the previous rulings (259/2015 Judgment, 141/2016 Order), the President of the Parliament of Catalonia agreed to put to vote the proposal of two parliamentary groups to modify and add a new item to the agenda for the voting on the ratification of the report and the conclusions of the Study Commission. This action means *“an objective breaching of her duty to deter any initiative intended to shirk”* the Court mandates. *“Which she had been explicitly warned about in the 141/2016 Order, given her capacity as President of the Parliament and under her own responsibility”*.

The performance of the President of the Parliament *“has not been forced by a scrupulous observance of the Standing Orders”*, as it was affirmed by Forcadell in the report referred to the Court. *“The regulatory provisions of the Parliament must not be contradictory with the Rule of*

the Constitution as supreme Law, neither can they be interpreted in a contradictory way with the Constitutional Court decisions". Based on the Standing Orders of the Parliament, the Bureau could have agreed on rejecting the proceeding with the parliamentary proposal *"for contravening rulings"* covered by the decisions of the Court.

Therefore, along with the declaration of unconstitutionality and nullity of the 263/XI Resolution of the Parliament of Catalonia, the Plenum agreed on notifying personally its decision to the President of the Parliament, the members of the Bureau, the President and the rest of the members of the Generalitat of Catalonia Government. The Court also warned about the liabilities they may eventually incur, their duty to refrain from the compliance of the 263/XI Resolution and their duty to deter or paralyze any initiative intended to ignore the nullity of the Resolution.

The Plenum clarified that *"the Court does not reckon itself as the one entitled to resolve about Forcadell's eventual criminal responsibility"*. *"However, it is entitled to determine if the circumstances are serious enough to inform the Public Prosecution Office, so that the latter may, if convenient, initiate a criminal prosecution"*.

Madrid, 6 October 2016