



CONSTITUTIONAL COURT OF SPAIN
Cabinet of the President
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THE CONSTITUTIONAL COURT ANNULS THE RESOLUTION OF THE PARLIAMENT OF CATALONIA THAT FORESEES A REFERENDUM IN 2017

The Plenum of the Constitutional Court has upheld the execution issue submitted by the State Lawyer regarding Resolution 306/XI, 6 October of the Parliament of Catalonia that foresees a referendum this year. This decision includes the nullity of the sections that were challenged and the referral to the General Prosecutor of all the information to determine if criminal actions against the President of the Chamber, Carme Forcadell; the Vice-president, Lluís María Corominas; the First Secretary, Anna Simó; the Third Secretary, Joan Josep Nuet i Pujals; and the Fourth Secretary, Ramona Barrufet i Santacana are due or not.

The execution issue —the third submitted by the State Lawyer regarding 259/2015— does not affect Resolution 306/XI as a whole, it affects only several sections called: “*Referendum*” and “*Constituent Process*”, included in Title I on “*the political future of Catalonia*”.

This sections go against what the Constitutional Court said in several decisions:

- **Judgment 259/2015.** Annulled Resolution 1/XI, 9 November 2015 of the Parliament of Catalonia, on the beginning of the political process in Catalonia given the electoral results the 27 September 2015.
- **Order 141/2016.** Upheld the first execution issue submitted by the Government regarding the Resolution 5/XI, 20 January of the Parliament of Catalonia on the creation of parliamentary commissions, the so called Study Commission of the Constituent Process.
- **Interim order 1 August 2016.** Suspended provisionally resolution 263/XI of the Parliament of Catalonia that ratified the report and the conclusions of the Study Commission of the Constituent Process. The interim order contained a warning for the President of the Chamber, for the rest of the members of the Bureau and the Secretary General. This warning was also addressed to the President and the rest of the members of the Government Council of the *Generalitat* de Catalonia regarding their duty to abide by the Court’s decisions. Also warned them about the eventual criminal responsibilities they might incur.
- **Judgment 170/2016.** Upheld the second execution issue of Judgment 259/2015 submitted by the Government. In this case regarding the aforementioned Resolution (263/XI). It recommends the General Prosecution to call Carme Forcadell to testify.

This order specifies that the challenged resolution “*goes against the Court’s decisions*” because “*it reflects the Parliament of Catalonia will to elude the constitutional reform procedures to pursue the political project of disconnecting Catalonia from Spain which constitutes and unacceptable action de facto basis (incompatible with the Welfare and democratic State and the rule of law established in Article 1.1 of the Spanish Constitution)*”.

The Court points out that Resolution 306/XI does not only produce political effects, also legal ones because “*it demands the fulfilment of several specific actions by the public authorities*” pursuing the implementation of the ‘constituent process’.

On the call for the referendum, the Plenum reminds that, following its decisions from 2015, the Autonomous Community of Catalonia to make referenda (this competence belongs to the State) or consultations on fundamental “*topics already concluded with the constituent process*”. Therefore, “*the Parliament of Catalonia cannot ignore that the Autonomous Community of Catalonia is not competent to call for a referendum.*”

The Court reiterates that public representatives are obliged to abide by the Constitution; “*that the democratic legitimacy of a legislative body or the Autonomous Community cannot be opposed to the unconditional primacy of the Constitution*” and that “*in a democratic conception of the power there is no other legitimacy than the constitutional legality given that the latter is founded in the respect for democracy and its values. Without accordance with the Constitution there is not legitimacy*”.

The parliamentary autonomy “*cannot be used as an excuse for the Autonomic Parliament to arrogate itself the power to violate the constitutional order*”. In this case, as it happened with Resolution 263/XI, the Parliament of Catalonia has passed several bills submitted by two parliamentary groups “*whose content, objectively contrary to the Constitution, was not difficult to establish*” given the previous decisions of this Court. All these rulings and warnings were known by the Parliament of Catalonia before it started “*debating and voting in the plenary session of 6 October 2016*”.

With the adoption of the resolution now challenged, the Parliament of Catalonia “*has gone against the repeated warnings of this Court*” and has called “*once again for the understanding of the democratic principle objectively contrary to the Constitution*”. This way, the Parliament of Catalonia confirms “*its illegal will to continue the constituent process in Catalonia beyond the constitutional order and without abiding by the decisions of the Spanish State, particularly the ones of this Court*”.

For all these reasons, the Court agrees to uphold the execution issue and declares the unconstitutionality and the nullity of the challenged sections of Resolution 306/XI.

The Court upholds also the request of the State Lawyer regarding the personal notification of this decision to the President of the Parliament of Catalonia, the members of

the Bureau and the rest of the members of the Government Council. The Courts “*warns them on their duty to halt or stop any material or legal initiative that directly or indirectly intends to ignore this nullity*”.

Finally, the Plenum agrees to uphold the request to call to testify individuals regarding the President of the Parliament, the first Vice-president, the first Secretary, the third Secretary and the fourth Secretary. The Court explains that “*it is not competent to resolve on whether or not this conduct constitutes a criminal offence*” but “*it does to establish that the aforementioned circumstances are serious enough to make a referral to the General Prosecutor.*”

Madrid, 16 February 2017