



## PRESS RELEASE No. 67/2017

### THE CONSTITUTIONAL COURT SETS, BY UNANIMITY, PENALTY PAYMENTS TO BE IMPOSED TO MEMBERS OF THE SUSPENDED ELECTORAL INSTITUTIONS UNTIL THEY ABIDE BY THE RULINGS OF THE COURT

The Plenary Session of the Constitutional Court has, by unanimity, resolved to impose penalty payments amounting to **12,000 €** to the seven members of the **electoral institution of Catalonia**, as well as penalty payments amounting to **6,000 €** to the fifteen members of the **territorial electoral institutions**. These penalty payments **are aimed at achieving the compliance with the injunctions and orders contained in the jurisdictional decrees (“providencias”)** issued on September 7<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup>. It follows from those rulings that the members of those electoral institutions **must revoke all the resolutions and decisions they have adopted, communicate the revocation to the addressees of said decisions and resign from their offices.**

The purpose of penalty payments is not that of imposing a sanction, but rather that of obligating to the compliance of the rulings of the Court. Such economic measures will be imposed only if non-compliance persists as of 10:00 AM of the day following the day on which this ruling is published in the BOE, the Spanish official gazette. The ruling is accompanied by the **concurrent opinion (which agrees with the ruling and differs on its grounds)** of Magistrates Fernando Valdés Dal-Ré, Juan Antonio Xiol and María Luisa Balaguer.

Lastly, the Plenary Session has resolved to communicate the facts at issue to the State Prosecutor so that the latter is enabled “*as the case may be, to inquire about the criminal responsibility*” of the members of electoral institution of Catalonia and the members of the territorial electoral institutions.

With regard to the persons that have not been duly notified despite repeated attempts, the Court resorted for the first time to the application of article 92.5 of the Organic Law on the Constitutional Court (LOTC). The latter empowers the Court to adopt coercive measures before hearing the parties when non-compliance relates to the precautionary suspension of norms or acts and “*circumstances of a special constitutional relevance*” occur. The provision adds that the prosecutor and the parties will be heard when the decision imposing coercive measures is adopted. Consequently, the Court has accorded a common period of three days to the prosecutor and to the two members at issue so that they can submit their arguments. After hearing the parties, the Court shall render a ruling whereby “*it shall lift, confirm or modify the daily penalties previously adopted*”.

For the sake of clarity, it is relevant to note that the Court has adopted this coercive measure as a result of non-compliance of the following rulings:

- September 7<sup>th</sup> 2017. **Precautionary suspension of Resolution 807/XI and Law 19/2017** of the Parliament of Catalonia, **on the referendum of self-**

**determination**, as a result of granting leave to proceed to the appeal of the Spanish Government.

- September 7<sup>th</sup> 2017. **Precautionary suspension of Decree 140/2017 of the Government of Catalonia, containing complementary norms** for the holding of the referendum of self-determination, as a result of granting leave to proceed to the appeal of the Spanish Government.
- September 12<sup>h</sup> 2017. **Precautionary suspension of the law on legal transition and the foundation of the republic**, as a result of granting leave to proceed to the appeal of the Spanish Government.
- The jurisdictional decrees issued in order to adopt those suspensions (except for the one related to the decree calling the referendum), **expressly warned the seven members of the electoral institution of Catalonia “to refrain from appointing the members of the territorial electoral institutions, from creating any sort of register or file needed for the holding of the referendum of self-determination and from any act or activity carried out in application of article 18 of Law 19/2017”**.
- September 13<sup>th</sup> 2017. In addition, another jurisdictional decree was issued on this date whereby the suspension of Resolution 807/XI of the Parliament of Catalonia was notified to the members of the regional electoral institutions. Such decree warned them of their duty to abide by the decisions of the Court.

**The Court notes that all the jurisdictional decrees were published in the BOE, the Spanish official gazette.**

Following the presentation of legal documents by the State Attorney, the Constitutional Court became aware of the non-compliance of all of its rulings related to the members of the electoral institutions of Catalonia. As a result, the State Attorney requested the imposition of penalty payments as provided in Article 92.4(a) of (LOTC).

The latter violations have consisted not only on the designation of the members of the territorial electoral institutions (in the territories of Aran, Barcelona, Gerona, Lérida and Tarragona). They also concern the decisions related to the size of the ballots, the delay for the presentation of organizations interested by the referendum or the approval of the so-called “*instructions for the representatives of the Administration and for the members of the electoral boards*”.

The ruling of the Court spells out the nature of the penalty payments. The latter are one of the tools that the Law (articles 92.4 and 5 LOTC) provides to the Constitutional Court “*in order to secure the effective compliance of its judgements and other rulings*”. It goes on to say, for the sake of clarity, that the function of said coercive measures “*is not to inflict a punishment for an illegal or non-juridical behaviour*”, but “*to achieve an appropriate enforcement of the rulings of the Constitutional Court*”.

With regard to the imposition as coercive measures of penalty payments in particular, the Court notes that “*the economic constriction flowing from their imposition seeks the objective of altering a behaviour that ignores a ruling rendered by the Court. It thus intends to restore the constitutional order that had been disrupted by forcing the compliance with the content of the ruling*”. The absence of “*any hint of a repressive or punishing nature*” in these penalties carries a consequence: providing its addressees, who could incur in non-compliance with the order of the Court, the opportunity, during a certain period, “*to restore the disrupted legality during the sufficient time period they have been accorded to proceed in that fashion*”. Were the violation to persist after that lapse of time has ended, the coercive measure would become effective.

Subsequently to the analysis of the factual matrix, the Court concludes that the

necessary circumstances to impose penalty payments occur in this case.

With regard to the amount of those penalties, they are higher for the members of the electoral institution of Catalonia because this institution *“is in a core position regarding the holding of the referendum”*, and the violation of the rulings of the Court by its members have been repeated. As regards the members of the territorial institutions, they have *“collaborated in the non-compliance of the jurisdictional decrees”*, but their behaviour is not characterized by the *“features of reiteration, hierarchy or importance of the organ attributed to the members of the electoral institutions of Catalonia”*. It follows that a lower amount is set for them.

The Plenary Session notes that it may not impose the minimum penalty set on the law (3,000 €) due to several reasons: the seriousness that the eventuality of holding the referendum for the public interest; the responsibility that, for that purpose, is assumed by the members of the electoral institutions; the urgency required by the compliance of the suspension measure issued by the Court concerning the norms at issue; and the need to strengthen the deterrent effect of the coercive penalty.

With regard to the period set so that the members of the electoral institutions abide by the rulings rendered by the Court (the first penalty will be effective as of 10:00 AM of the day following the one on which the ruling of the Court is published in the BOE), the Court notes its appropriateness, *“taking account the urgency of restoring the disrupted constitutional order”*. It is a sufficiently lengthy delay so that all the members *“justify before this Court”* that they have resigned from their office *“after having revoked all the decisions they had adopted and communicated such revocation”*.

In their concurrent opinion, Magistrates Valdés, Xiol and Balaguer state that the complex political situation that has led to the issuance of this ruling by the Court *“may place the Constitutional Court in the representation of a role that blurs its original nature”*. They went on to affirm that the control of public institutions that falls on the Court is exercised *“through jurisdictional pronouncements of a declarative content. The latter imply, in accordance with the loyalty owed to the constituent agreement, a decision which is deemed to be voluntarily accepted by all involved parties, which all have an equally legitimate and respectable constitutional position”*. Thus, they consider that *“the executive force”* of judgements and other rulings of the Court derives from that *“constitutional auctoritas”*, so much so that resorting to any kind of enforcement proceeding *“should constitute an exceptional mechanism aimed at guaranteeing the respect to the authority of its pronouncements”*.

In this particular case, they hold that the effectivity of the penalty payments is highly doubtful with regard to forcing the compliance of the precautionary suspension of Resolution 807/XI of the Parliament of Catalonia; however, they do admit their appropriateness in order to remove the factual situations created as a result of the activity of the members of the electoral institutions.

Madrid, 21 September 2017