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THE CONSTITUTIONAL COURT, BY UNANIMITY, SETS PENALTY PAYMENTS TO BE IMPOSED ON SENIOR OFFICIALS OF THE GOVERNMENT OF CATALONIA IN CHARGE OF ORGANIZING THE REFERENDUM UNTIL THEY ABIDE BY THE DECISIONS OF THE COURT

The Plenary Session of the Constitutional Court has, by unanimity, resolved to impose penalty payments to the incumbent officials of the Electoral Administration of Catalonia, Josep Maria Jové i Lladó and Montserrat Vidal i Roca. These penalty payments amount to **12,000 € and 6,000 €, respectively, and they pursue their compliance with the requirements and orders contained in the jurisdictional decrees** (*“providencias”*) of the Court, dated on September 7th and 12th and suspending the independence referendum. The penalty payments will be imposed on a daily basis until the senior officials at issue ***“justify before the Court that they have revoked the resolutions [they had] adopted, that they have completely stopped any activity considered as a violation of the suspension measure concerning the Catalan referendum on self-determination, and that they have notified to the addressees of said decisions that they are devoid of any effect”***.

The purpose of penalty payments is not to impose a sanction, but rather enforce compliance with the rulings of the Court. These fines shall only be imposed in the event of persistent non-compliance as of 10:00 AM on the day following the day on which the 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 General State Prosecutor so that he may have the opportunity *“as the case may be, to inquire about the criminal responsibility”* of Jové i Lladó, General Secretary of the of the Deputy Presidency of Economy and the Treasury, and of Vidal i Roca, chief officer of the Area of Electoral Processes and Popular Consultations.

The Plenary Session has adopted the decision regarding these penalty payments in accordance with article 92.5 of the Organic Law on the Constitutional Court (LOTIC). This provision 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 both officials concerned by these measures so that they submit their arguments. Once the arguments have been received, the Court shall issue 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 7th 2017. **Precautionary suspension of Law 19/2017** of the Parliament of Catalonia, **on the referendum of self-determination**, as a result of the admission to process the appeal of the Spanish Government.
- September 7th 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 the admission to process the appeal of the Spanish Government.
- September 12^h 2017. **Precautionary suspension of the law on legal transition and the foundation of the republic**, as a result of the admission to process the appeal of the Spanish Government.

The Court notes that those jurisdictional decrees (“*providencias*”) were published in the BOE so much so that their diffusion knowledge and effects were properly guaranteed. In addition, another jurisdictional decree issued on September 14^h expressly warned Jové and Vidal of their “*duty to prevent or stop any initiative that might lead to ignoring or circumventing the suspension adopted*” by the Court concerning the law on the referendum. It also warned them of the eventual liabilities, including of criminal nature, they might incur were they to disobey the decisions of the Court.

The Court designates the **decisions that, *inter alia*, incur in non-compliance with the rulings of the Court**: the approval of the draft ballots and the electoral documents; the elaboration and distribution of these documents through a web page; the institutional campaign on the referendum; the elaboration of a set of “*Instructions for the representatives of the Administration and for the members of the Electoral institutions*”; and lastly, the provision of material and human resources to the electoral institutions created for the referendum in order to fulfil their functions.

The Plenary Session underscores that the Electoral Administration of the Government of Catalonia “*enjoys a central position concerning the organisation of the referendum, since crucial missions are attributed to it so that the referendum takes place*”. Likewise, it emphasizes that Jové and Vidal centralize “*all the functions for which that [electoral] administration has legal competence*”, so much so that “***without their participation the rulings of this Court could not have been violated***”.

Therefore, considering the seriousness of the non-compliance, the importance and number of infringed rulings, the consequences resulting from that violation for the public interest, and the urgency derived from the date set for the referendum, the Plenary Session has resolved to impose daily penalty payments of 12,000 € to Josep Maria José i Lladó and of 6,000 € to Montserrat Vidal i Roca. **Penalty payments will be due daily until the rulings of the Court are complied with** or until such compliance becomes impossible.

Magistrates Valdés, Xiol and Balaguer reiterate the opinion they issued concerning the imposition of penalty payments to the members of the electoral institutions. Said opinion stated 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. This implies, 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 penalty payments are of a doubtful effectiveness as a measure to force compliance of the precautionary suspension contained in Resolution 807/XI of the Parliament of Catalonia. However, they do admit their suitability to terminate the factual situations created as a result of the activity of the members of the electoral institutions.

Madrid, 21 September 2017