



CONSTITUTIONAL COURT OF SPAIN
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THE CONSTITUTIONAL COURT ANNULS CATALONIA'S DECLARATION OF INDEPENDENCE AND CONSIDERS THAT THE ACTIONS OF THE AUTONOMOUS PARLIAMENT HAVE BEEN A "SERIOUS ATTACK" AGAINST THE RULE OF LAW

The Plenary Session of the Constitutional Court has, by unanimity, declared the unconstitutionality and invalidity of Resolutions "*Declaration of the representatives of Catalonia*" and "*Constituent process*", adopted on October 27^h by the Parliament of Catalonia. The Court has thus upheld the enforcement request made by the State Attorney's Office. The judgement holds that both Resolutions "*blatantly contradict*" its previous rulings. It refers in particular, to judgement 114/2017 of the Court, which had already declared the invalidity of so-called "*law on the referendum of self-determination*", and to the jurisdictional decree ("*providencia*") that granted leave to proceed and issued a precautionary suspension of so-called "*law on legal transition and the foundation of the republic*".

Likewise, the Court has resolved to inform the Prosecutor's Office of the actions of the President of the Parliament of Catalonia, Carme Forcadell, and to several other members of that body. The Court considers that she and the members of Parliament that voted in favour of those resolutions might have committed a criminal offence.

The actions that have led to the ruling of the Court took place on October 27th. That day, the Bureau of the Parliament of Catalonia granted leave to proceed to the proposals made by pro-independence parliamentary groups JxSí and CUP-CC. Likewise, it rejected the motion to reconsider made by the PSC parliamentary group. The Bureau resolved to grant leave to proceed in spite of the serious warnings of the Secretary General of Parliament and its Chief Lawyer. They both noted that the proposals at issue involved "*an application, development or enforcement*" of the law on referendum and the law on legal transition, which had been affected by rulings issued by the Constitutional Court.

The Plenary Session of the Parliament of Catalonia first adopted the proposition called "*Constituent process*". Later on, by way of a secret vote and "*departing from the ordinary form of vote*", it adopted the resolution called "*Declaration of the representatives of Catalonia*". The latter contained the "*explicit declaration of the independence of Catalonia*" adopting the form of a republic.

Both resolutions "*assume that the Parliament of Catalonia arrogates to itself attributions which are inherent to sovereignty*", and thus assume prerogatives which are "*superior to those that derive from the autonomy recognised by the Constitution*". The Court goes on to state that, by acting in this way, the Parliament of Catalonia "*ignores the repeated pronouncements and warnings issued by this Court*". Moreover, the Parliament "*intends to eliminate de facto, as regards the territory of Catalonia and the Catalan people in its entirety, the applicability of the Constitution, the Statute of*

Autonomy and any rule of law which does not fit its sole will".

The actions of the Parliament of Catalonia constitute a "blatant attack" against the rule of law and, likewise, "infringe the democratic principle with the same intensity". Regarding this point, the Court reiterates that "in a constitutional State, the democratic principle cannot be disjointed from the unconditional primacy of the Constitution".

The Court reminds the "explicit and repeated pronouncements" it has recently issued, warning the public institutions and notifying the members of the Bureau of the Parliament of Catalonia of their responsibilities. These include their "duty to prevent or stop" any initiative that involves a "unilateral alteration of the constitutional framework or non-compliance with the rulings of this Court". Such warnings do not amount to a restriction of parliamentary autonomy, but are rather "a necessary consequence of the Constitution's supremacy over all public authorities" (article 9.1 of the Spanish Constitution [CE]).

The Court notes that the Bureau of the Parliament of Catalonia has once again ignored these repeated warnings. It has done so by adopting two resolutions which "reflect the repeated intention of that body to circumvent all the procedures for constitutional reform in order to carry on its own political project, which seeks a separation from the Spanish State". According to the Court, this constitutes "an unacceptable factual course of action for the purpose of reforming the Constitution by ignoring its provisions or achieving its practical inefficacy". It is, consequently, "incompatible with the social and democratic State based on the rule of law proclaimed by article 1.1 CE".

Based on this, the Court has upheld the enforcement request and has declared the unconstitutionality and invalidity of the challenged resolutions.

Likewise, upon request by the State Attorney's Office and the Prosecutor's Office, the Court has resolved to communicate the actions at issue to the relevant judicial bodies, since they might constitute criminal offences. This decision concerns the President of the Parliament of Catalonia, Carme Forcadell, and the members of its Bureau that voted in favour of granting leave to proceed to the resolutions which have now been declared invalid.

According to the Court, the actions at issue must be placed within a factual matrix that begins with judgement 259/2015 of the Constitutional Court, which declared the unconstitutionality of Resolution 1/XI of the Constitutional Court, dated November 9th. That series of facts "evidences the inadmissible intent of a part of the Parliament of Catalonia, which intends to circumvent the constitutional order that underpins its own authority". With that purpose, it has sought "the infringement of the rulings of the Constitutional Court, thus neglecting that it is the Parliament's own responsibility to assure that its activity takes place within the framework of the Constitution".

The actions carried out by the President of the Parliament and the members of its Bureau that voted in favour of granting leave to proceed to the challenged resolutions "constitute an objective infringement of their duty to abide by the rulings of the Constitutional Court".

The Court does not have the jurisdiction to rule on the eventual criminal nature of the behaviour of the President of the Parliament and the aforementioned members of the Bureau. However, it is competent to note that "the referred circumstances constitute, as a whole, a series of serious enough elements". Thus, "they may be communicated to the Prosecutor's Office so that, if it deems it appropriate, may initiate criminal proceedings".

The Court resolves to notify personally its ruling to Carme Forcadell, President of the Parliament of Catalonia, as well as to the Permanent Bureau of that Parliament. Likewise, the ruling shall be notified to José María Espejo-Saavedra and Anna Simó, also members of the latter organ. They are warned of their duty to prevent or stop an initiative that involves ignoring or circumventing the rulings of the Court. They are also warned of the eventual criminal liability they might incur were

they to disobey this injunction.

Finally, the Court has, by unanimity, resolved to lift, as of their imposition, the penalty payments that had been imposed on Josep María Jové I Lladó and on Montserrat Vidal i Roca.

Madrid, 8 November 2017