

[HERE APPEARS THE COAT OF
ARMS OF SPAIN AND TEXT:
MINISTRY OF JUSTICE]

SUB-DIRECTORATE GENERAL
FOR LITIGATION SERVICES

PENAL DEPARTMENT

N.A.E. 81/18.

SPECIAL CASE 3/20907/2017.

4th Secretariat.

TO THE SECOND CHAMBER OF THE SUPREME COURT

THE STATE ATTORNEY, acting on behalf of the National State Administration, before the Second Chamber of the Supreme Court **APPEARS IN COURT** and, in accordance with the law, **STATES**:

On 25 October, 2018, the decision was notified to begin the oral proceedings for the listed persons and to dismiss the proceedings for others; the accusations were notified so they may present their **provisional findings** within the meaning of article 649 of the Criminal Procedure Law.

As laid down in article 650 and subsequent articles of the Criminal Procedure Law, under this letter, in the required form and time, **the provisional findings** are formulated against:

1. Oriol Junqueras Vies, Vice President of the Autonomous Government and Counsellor of the Economy and Finance of the Generalitat of Catalonia when the events took place.
2. Joaquim Forn Chiariello, Counsellor of the Department of Home Affairs when the events took place.
3. Jordi Turull Negre, Counsellor of the Department of Presidency when the events took place.
4. Raúl Romeva Rueda, Counsellor of the Department of Foreign Affairs, Institutional Relations and Transparency when the events took place.
5. Josep Rull Andreu, Counsellor of the Department of the Territory and Sustainability when the events took place.

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6. Dolors Bassa Coll, Counsellor of the Department of Labour, Social Affairs and Family when the events took place.
 7. Meritxell Borrás Solé, Counsellor of the Department of Governance, Public Administration and Housing when the events took place.
 8. Carles Mundó Blanch, Counsellor of the Department of Justice when the events took place.
 9. Santiago Vila Vicente, Counsellor of the Department of Enterprise and Knowledge when the events took place.
 10. Jordi Sánchez Picanyol, President of Asamblea Nacional Catalana (ANC) when the events took place.
 11. Jordi Cuixart Navarro, President of Omnium Cultural (OC) when the events took place.
 12. Carme Forcadell Lluís, President of the Autonomous Parliament and the Bureau when the events took place.
 13. Lluís María Corominas Díaz, Member of the Autonomous Parliament, First Vice-president of the Bureau until July 2017 and President of the parliamentary group of Junts pel Sí when the events took place.
 14. Lluís Guinó Subirás, Member of the Autonomous Parliament, First Vice-president of the Bureau in replacement of the former when the events took place.
 15. Anna Simó Castelló, Member of the Autonomous Parliament and First Secretary of the Bureau when the events took place.
 16. Ramona Barrufet Santacana, Member of the Autonomous Parliament and Fourth Secretary of the Bureau when the events took place.
 17. Joan Josep Nuet Pujals, Member of the Autonomous Parliament and Third Secretary of the Bureau when the events took place.
 18. Mireia Boya Busquets, President of the Parliamentary Group CUP. All
- of them of legal age and no criminal history.

First.- Punishable acts.

Defendant Oriol Junqueras Vies, in his role as Vice President of the Generalitat and President of Esquerra Republicana de Catalunya (ERC); Carme Forcadell Lluís, first as President of Asamblea Nacional Catalana (ANC) and subsequently as

President of the Parliament of Catalonia; Jordi Sánchez Picanyol, as President of ANC; and Jordi Cuixart Navarro, as President of Omnium Cultural, entered an agreement, as the main promoters, to implement a process that would conclude with the celebration of a self-determination referendum and eventually, with a declaration of independence by the Autonomous Community of Catalonia, without ruling out, to reach this objective, leaving aside the legal channels, breaking the law or disobeying the administrative or legal mandates and use social demonstrations if necessary to reach their objective. The agreement was based on three basic pillars:

- 1) the parliament, which function was to allow and facilitate the processing and approval of openly illegal laws (since they were declared unconstitutional) in order to provide legal coverage for the celebration of a self-determination referendum and the eventual declaration of independence, failing to comply with the judicial orders of the Constitutional Court as well as of all other jurisdictional courts;
- 2) the executive, which essential mission was to schedule and hold an illegal referendum and to create and manage State structures;
- 3) the social, with which the aforementioned sovereign entities played a crucial role by mobilising the population as an instrument to exert pressure to force a negotiation with the State.

In summary, the orchestrated plan primarily consisted of creating a confrontation from these institutions and forces against the constitutional and statutory legality, preventing the compliance with the issued administrative and legal rulings and organising social demonstrations to exert pressure on the State.

Each of the defendants, within their respective areas of responsibilities in each body –parliament or executive– or in the social upheaval activity but with a prior arrangement of intents and in a synchronised manner, participated in the execution of a common plan, responding to the events as they were taking place.

A) Events comprising the process which intent was to culminate with a declaration of independence by the Autonomous Community of Catalonia by part of the Government of the Generalitat and the Autonomous Parliament. The crime of sedition.

The arrangement between all the defendants was forged throughout a long process of maturation and previous failed attempts.

1. Background of the facts and conducts that are prosecuted in this Special Case.

We begin the account of the facts with the celebration of the illegal public consultation on 9 November 2014 convened by the president of the Generalitat of Catalonia at the time, Artur Mas Gavarró.

This previous process actually began on 19 December 2012 when Artur Mas Gavarró, who at the time was a candidate to the presidency of the Generalitat of Catalonia and leader of the political party *Convergència i Unió (CiU)*, along with Oriol Junqueras Vies, president of the political party *Esquerra Republicana de Catalunya (ERC)*, signed the *"Acuerdo para la Transición Nacional y para Garantizar la Estabilidad del Govern de Catalunya"* (*Agreement for the National Transition and to Guarantee the Stability of the Government of Catalonia*), where in 19 pages, they agreed on the broad outline of a deal for what was to be the 10th Term, including an agreement to celebrate an independence consultation in 2014.

Subsequently and precisely as a consequence of the agreement between both political parties, the Parliament of Catalonia, in Resolution 5/X of 23 January 2013, approved a Declaration of sovereignty and the right to decide by the people of Catalonia. This Resolution established that *"According to the will of the majority, democratically expressed by the people of Catalonia, the Parliament of Catalonia agrees to begin the process of making the right to decide effective in order for the citizens of Catalonia to collectively decide their political future,"* adding that *"The people of Catalonia, for legitimate democratic reasons, are considered a politically and legally sovereign people."*

Contested this Resolution of the Parliament by the Nation's Government, the Constitutional Court, in its ruling 42/2014 of 25 March, declared this Resolution unconstitutional and null and void, stating that *"Recognising the people of Catalonia as sovereign is not contemplated in our Constitution for the nationalities and regions that comprise the State and is therefore incompatible with art. 2 CE since it confers upon the subject of this quality, the right to break, by their own will, what is stated in the Constitution as its own basis in the constitutional precept: the inseparable unity of the Spanish Nation."* For this reason, the court declared the proclamation of the political and legal sovereign nature of the people of Catalonia unconstitutional and null and void. The ruling also declared that the so called *"right to decide of the people of Catalonia"* stated in the Resolution, could not be understood as a manifestation of a right to self-determination as it is not recognised in the Constitution, or as an attribution of sovereignty not recognised therein,

but as a political aspiration that can only be achieved via a process that follows the constitutional legality (FJ 3).

It also proclaimed that "*The unconditional primacy of the Constitution requires that all decisions of power, without exception, be made subject to the Constitution, without there existing, for the public power, spaces outside the Constitution or areas that are not subject to it. This way the democratic principle is also protected since the guarantee of the integrity of the Constitution must be seen, in turn, as the preservation of the due respect of the will of the people, in terms of its constituent power, which is the source of all legal-political legitimacy*" (FJ 4.c). The ruling also emphasized that "*the autonomous State is based on the fundamental principle that our Constitution states that the national sovereignty resides in the Spanish people (art. 1.2 CE), and therefore the sovereignty (...) is not the result of an agreement between historical territories that conserve certain rights prior to the Constitution and of a higher authority, but a rule of the constituent power that is imposed with general binding force in its area, not excluding prior historical situation from the Constitution.*" It finally explained that "*this Court has declared that autonomy is not sovereignty [STC 247/2007, FJ 4 a)]. From this we can infer that within the framework of the Constitution, an Autonomous Community cannot unilaterally hold a self-determination referendum to decide about their integration in Spain. This conclusion is in line with the decision reached by the Supreme Court of Canada in its ruling on 20 August 1998, which rejected the legality of a unilateral secession project by part of one of its provinces in terms of its Constitution as well as the principles of International Law.*"

On 12 February 2013, Decree 113/2013 was passed by the Presidency Department of the Generalitat of Catalonia, which created the "*National Transition Advisory Council.*"

Between July 2013 and July 2014 (when ruling 42/2014 of 25 March from the Constitutional Court had already been published), the "*National Transition Advisory Council*" drafted and delivered 18 reports to the Generalitat of Catalonia, which were merged into the so called *Libro Blanco de la Transición Nacional de Cataluña* (*White Paper on the National Transition of Catalonia*). On 29 September 2014, the president of the Generalitat of Catalonia at the time, at an event that took place at its institutional office, presented this report in full, which analysed different aspects that should be taken into account in the process of transitioning Catalonia into an independent country.

The Paper proclaimed the legitimacy of the self-determination process of Catalonia and considered different procedures for creating the new State based on if independence could be achieved through a collaboration framework negotiated with the Spanish Government or if by the contrary, instruments of opposition to independence would be deployed by the State.

Both instances incorporated the key factor of using popular demonstrations. In this regard, the White Paper expressly stated that: "***The support provided by the mobilised civil society could also constitute a decisive factor in reaching this objective [forcing a negotiation with the State].*** *In the event that this pressure to negotiate is not successful, the alternative available to the Generalitat to make effective the popular will expressed in favour of creating an independent State would be to unilaterally declare independence.*" Additionally, the report also recognised that an efficient unilateral declaration of independence required having State structures that would allow to effectively govern the territory. Likewise, the independence process had the "*support of the mobilised civil society.*"

The White Paper stated the following: "*The unilateral declaration or proclamation of independence, in this context, expresses the will to immediately disconnect from the institutions of the Spanish State and its legal order, in a manner that no longer recognises the authority of its institutions or a connection with this State. The authority in Catalonia from this moment forward is solely the Generalitat and the applicable legal order is solely that which emanates from the will of its institution (including the international right that is internally recognised). However, proclaiming this will does not necessarily mean that independence is actually effective and even less that it will be effective immediately and automatically. At least for some time, it is possible that a conflict will be generated between the two orders, in a manner that the authorities and laws of each of them will attempt to prevail and obtain control. For this reason, the effectiveness of a unilateral proclamation of independence is in a large part conditioned by the existence of State structures capable of exercising the powers of a government throughout the territory and obtain social acceptance of its exercised power.*"

At the same time that the president of the Generalitat of Catalonia publicised the *White Paper on the National Transition of Catalonia*, specifically on 26 September 2014, pursuant to the pre-existing political agreement, the Parliament approved Catalan law 10/2014, on non-referendum popular consultations and other forms of citizen participation and the Government of the Generalitat enacted the Decree by the Presidency Department of the Generalitat of Catalonia 129/2014 of 27 September, on the holding of a non-referendum type consultation on the political future of Catalonia.

Both the Law on popular consultation as well as the Decree on holding a popular consultation were provisionally suspended two days after they were enacted, pursuant to several rulings of the Constitutional Court dated 29 September and the president of the Generalitat of Catalonia was thereby notified of the suspension ruling. In spite of this, six weeks later, on 9 November 2014, a general consultation was held in Catalonia.

The Constitutional Court, in its judgements 31 / 2015 and 32 / 2015, of 25 February, finally declared the unconstitutionality and nullity of the initially suspended laws.

On 24 February 2015, Decree 16/2015 was published by the Governing Council of the Generalitat of Catalonia, which created the "*Commissioner for the National Transition*." This Decree established that the Commissioner for the National Transition (which was assigned to the Presidency Department) had the "*inherent functions of promoting, coordinating and implementing the measures that would culminate in the National Transition process and of monitoring the State structures, under the guidelines set by the Government and under the direction of the head of the department*."

After some time, several plans were published on the Government of the Generalitat of Catalonia's Website: "*Executive Plan to Prepare the State Structures*," and another one called "*Strategic Infrastructures Plan*," both included in what was identified as "*10 Strategic Projects for Government Action and for National Transition*." These plans were in tune with the mandates required of the Government of the Generalitat in the Law of the Parliament of Catalonia 3/2015 of 11 March, on tax, financial and administrative measures (DOGC of 13 March 2015).

After both rules were provisionally suspended (Law 3/2015 and Decree 16/2015) through several rulings of the Constitutional Court, pursuant to the challenge filed by the Nation's Government, STC 128/2016 of 7 July declared the unconstitutionality and subsequent nullity of several precepts of Law 3/2015, as well as its Additional Provisions: twenty second, twenty fourth and twenty sixth. The president of the Generalitat was notified of the court orders by which the suspension of the effectiveness of these provisions was agreed upon. Subsequently, STC 52/2017, of 10 May, declared the unconstitutionality and nullity of the already suspended Decree 16/2015, as well as –and is hereby described– "*the so called 'executive plan to prepare the State structures' and the 'strategic infrastructures plan'*", published on the

'*govern.cat*' website, via the Generalitat of Catalonia (*gencat.cat*) website, in document '*10 Strategic Projects for Government Action and for National Transition 2015*.'

The Second Chamber of the Supreme Court ended up convicting for a crime of disobedience in ruling 972/2017 of 22 March 2017.

2. From here on, we refer to the specific facts and conducts for which accusations may be made in this Special Case.

On 30 March 2015 a roadmap was signed by the political parties *Convergència Democràtica de Catalunya* (represented by defendant Josep Rull Andreu) and *Esquerra Republicana de Catalunya* (represented by Marta Rovira Vergés, declared in default in this Special Case), with sovereign entities *Òmnium Cultural* (represented by the deceased Muriel Casals Couturier), *Assemblea Nacional Catalana* (represented by their president at the time Carme Forcadell Lluís) and the *Asociación de Municipios para la Independencia* (represented by their vice-president José María Foige Rafel). That roadmap expresses, in writing and publicly, the arrangement between all the entities where the defendants hold positions to carry out the actions we describe below.

The roadmap established that, after the regional elections held on 27 September 2015, if the pro-independence options achieved a majority, they would immediately begin a national transition process that would proclaim the Catalan Republic within a maximum of 18 months, with the creation and start up of the structures required of the new State and by drafting a constitutional text project within 10 months.

On 12 April 2015, ANC drafted and approved their own roadmap where they ensured compliance with the resolutions of the parliament of Catalonia related with promoting the process, with special emphasis on "*the disconnection laws, the convening and holding of a binding referendum under the stipulated terms and the immediate proclamation of independence in the case of a victory of the Yes vote*." Regarding the Executive Power, it affirmed that they had to work together with the Government to achieve the maximum international support regarding the right of self-determination and the recognition of the new Catalan State. The roadmap also expressly stated that, in the event that the Catalan Regional Government was "politically and legally taken over by the Spanish State and the possibility that some sovereign parties were outlawed", "***the people would emerge as the political agent to drive the independence process***." In other words, they

assumed their role of, first, acting together with the Government of Catalonia and second, if necessary, mobilise the people as a method of exerting pressure.

Similarly, the document Enfocat –discovered at the home of Josep Maria Lladó (Deputy Secretary General of the Generalitat and right hand man of Oriol Junqueras at the time) as a result of the legally authorised search conducted on 20-9-2017 by the Examining Court No. 13 of Barcelona–, included an extensive guide of the process that was to be carried out. This document highlighted that the time for independence would arrive "*when there is a clear determination by the people to support and become actively involved and with international complicity; we should start conservatively **and progressively increase the level of conflict according to the response of the State**, under the leadership and coordination of all actors involved and without any shadow of a doubt in terms of the actions and schedules.*" Again, the clear expression of a prior agreement based on not following the legal channels as mentioned by the Constitutional Court in their ruling, involving public demonstrations and collective action.

The referenced documents –White Paper, Roadmap (jointly and of ANC) and Enfocat– constitute proof that the defendants assumed and accepted, not only the option of breaking with the Spanish State and the activation of a constitutional process outside the constitutional, statutory and legal framework, but also the need, if applicable, to disobey the mandates from legitimate authorities and resorting to social pressure if necessary since it was expected that the Spanish State would react from its institutions or powers.

The process that was actually deployed completely coincided with what was expressed in these documents, thus following from the beginning, the parliamentary, executive and social agreement we have previously referred to.

The events that are prosecuted temporarily began with the celebration of the regional elections held on 27 September 2015. In these elections, the electoral group Junts pel Sí, which was comprised by the political party Convergència Democràtica de Catalunya and the political party Esquerra Republicana de Catalunya, obtained a total of 39.59% of the votes and CUP (Candidatura de Unidad Popular) obtained 8.21% of the votes. This is a total of 47.80% of the cast votes (29.56% of the total electoral census). With these results they obtained a majority of deputies with 72 of a total of 135 deputies that make up the Parliament of Catalonia: the electoral group Junts pel Sí obtained 62 deputies and CUP obtained 10 deputies.

This way, the pro-independence block obtained a majority of seats in the Parliament of Catalonia; however, they did not reach the majority required by the Statute of Autonomy of Catalonia to propose modifying the statutory framework. Specifically, the Statute of Autonomy of Catalonia requires (arts. 222 and 223) majorities of 2/3 of the Parliament of Catalonia to approve reforming the Statute of Autonomy; in other words, 90 deputies of 135.

From this moment on, the aim of the political term was focussed on following the aforementioned roadmap, for which an essential tool was established – along with the actions of the Parliament and Government of Catalonia, which we will refer to– consisting of the use of social demonstrations, channelled primarily through entities ANC and OC.

Proof of this is that in the month of November of 2015, the Parliament of Catalonia passes Resolution I/XI of 9 November with 9 points plus an annex: i) establishing that "*there is a majority of seats held by parliamentary forces, which objective is for Catalonia to become an independent state*" and "*there is a wide majority of pro-independence votes and seats that are committed to initiating a non-subordinated constituent process,*" ii) we "*solemnly declare the initiation of a process to create an independent Catalan State in the form of a republic,*" iii) we "*proclaim the opening of a citizen, participative, open, integrating and active constituent process to set the basis of the future Catalan constitution,*" iv) we urge the government to adopt the necessary measures, v) in 30 days we must initiate "*the processing of the laws for a constituent process, social security and tax authority,*" vi) "*the Parliament of Catalonia, as the repository of sovereignty and the expression of constituent power, reaffirms that this chamber and the process of democratic separation from the Spanish State will not be dependent on the decisions made by the institutions of the Spanish State, in particular the Constitutional Court, which in its opinion lacks legitimacy and competency as a consequence of, among others, the sentence of June 2010 concerning the Statute of Autonomy of Catalonia, previously voted on by the people in a referendum,*" vii) "*the Parliament of Catalonia must adopt the necessary measures to open this process of separating from the Spanish State, in a manner that is democratic, massive, sustained and peaceful that will allow empowering the people at all levels and based on an open, active and integrating participation,*" viii) "*the Parliament of Catalonia urges the future government to exclusively comply with the rules or mandates issued from this legitimate and democratic chamber, with the aim of safeguarding the basic rights that*

could be affected by the decisions of the institutions of the Spanish State,"
ix) *"the Parliament of Catalonia declares its willingness to initiate negotiations to apply the democratic mandate of creating an independent Catalan State in the form of a republic and agrees to notify the Spanish State, the European Union and the entire international community."*

Now we will list the concerted actions taken to achieve the previously described objectives, carried out in: i) the Parliament of Catalonia, ii) the Autonomous Government building and iii) in the social sphere, on the streets, convening the social organisations and organised citizen groups to mobilise for the purpose of exerting pressure on the State.

3. Legislative initiatives in the Parliament of Catalonia.

The Parliamentary Bureau was comprised of 7 members: Carme Forcadell i Lluís, as President of the pro-independence group *Junts pel Sí* (ERC); Lluís María Corominas i Díaz, as First Vice-president and member of *Junts pel Sí* (CDC), until he was replaced on 25-7-17 by Lluís Guinó Subirás (CDC); Anna Simó i Castelló, First Secretary of the pro-independence group *Junts pel Sí* (ERC); Joan Josep Nuet i Pujals, Third Secretary, of *Catalunya Sí que es Pot* (EUiA) and Ramona Barrufet i Santacana, Fourth Secretary of the pro-independence group *Junts pel Sí* (CDC). Also, as members of the Bureau we had Jose M^a Espejo (Ciudadanos), as Second Vice-president and David Pérez (PSC), as Second Secretary.

The functions of the Parliamentary Bureau, according to article 37.3 of the Regulation of the Parliament of Catalonia, are to classify parliamentary writings and documents and declare their acceptance for processing or rejection.

The defendants that are members of the Bureau should have rejected and stopped all proposals that are contrary to the constitutional order and in spite of multiple warnings and individual requirements formulated by the Constitutional Court to refrain from processing these types of initiatives, they systematically voted in favour of accepting them, opening the possibility of failing to comply with the constitutional, statutory and legal norms as well as the judicial decisions aimed at restoring the legality.

The first initiative accepted for processing allowed passing the aforementioned Resolution 1/XI, of 9 November 2015, for initiating the process of creating an independent Catalan State, stating in its sixth paragraph that the Parliament and the disconnection process *"will not be dependent on the decisions made by the institutions of the Spanish State, in particular the Constitutional Court."* This initiative was accepted for processing by the Bureau with the favourable votes of Forcadell, Corominas,

Simó, Barrufet and Nuet. It was challenged in the Constitutional Court and STC 259/15 of 2 December declared the initiative unconstitutional.

The second initiative resulted in the passing of Resolution 5/XI, of 20 January 2016 for creating a "*Commission to Study the Constituent Process*." This commission was established on 28 January 2016 and it reached the conclusion that the objective was to disconnect from the Spanish laws through the unilateral option; in other words, through illegal procedures. The ATC 141/16, of 19 July, rejected the constitutionality of this activity by the commission and warned the members of the Bureau regarding their duty to not accept these types of initiatives.

However, in spite of the warning, the conclusions reached by this Commission were debated in the Parliament of Catalonia on 27 July 2016 and were approved through the passing of Resolution 263/XI, of 27 July 2016. ATC 170/2016, of 6 October, nullified this Resolution. Additionally, it agreed to personally notify the resolution to the President of the Parliament of Catalonia, to the other members of the Parliament Bureau and to the Secretary General of the Parliament, as well as to the President and other members of the Governing Council of the Generalitat of Catalonia, cautioning them to refrain from carrying out any actions aimed at complying with Resolution 263/XI and their duty to prevent or stop any initiative, legal or material, that directly or indirectly encouraged the ruling to be ignored or evaded, advising them of the possible consequences, including criminal, which they could incur in case of non-compliance with the orders of the Court.

The fourth initiative, approved by the Bureau on 4 October 2016 with the favourable vote of the five aforementioned defendants, contained the proposals to urge the Government of the Generalitat to hold a binding referendum on the independence of Catalonia and initiate a constituent process if this option was voted by a majority. This prompted Resolution 306/XI, of 4 October, which once again went –against the decisions of the Constitutional Court– the right of self-determination of Catalonia, urging the Government to hold a democratic consultation and provide all the necessary resources to carry it out. ATC 24/2017, of 14 October, nullified this Resolution. It also agreed to personally notify the court order to the President of the Parliament of Catalonia, to the other members of the Parliament Bureau and to the Secretary General of the Parliament, as well as to the President and other members of the Governing Council of the Generalitat of Catalonia, cautioning them to refrain from carrying out any actions aimed at complying with the nullified sections of Resolution 306/XI and their duty to prevent or stop any initiative, legal or material, that directly or indirectly encouraged ignoring or evading the ruling that nullified those sections of the Resolution, advising them of the possible consequences, including criminal, which they could incur in case of non-compliance with the orders of the Court. Finally, it allowed the Prosecutor to make their allegations.

The fifth initiative approved for processing was the Budget Act, Law 4/17, of 28 March, containing a 40th Additional Provision that established a budget item to hold a referendum on 1 October as agreed to in the aforementioned Resolution 306/XI. The five defendants once again voted in favour of approving it for processing in spite of the reiterated warnings of illegality and criminal responsibility.

However, the most relevant initiatives in terms of their content were the proposals of the Self-determination Referendum Bill –which proclaimed the sovereign political nature of the people of Catalonia and established the hierarchical prevalence of this Act with respect to any rule that could come in conflict with it, convening the people to a consultation– and the Law of transitional jurisprudence and foundation of the Republic –which in the event that the result of the referendum was in favour of independence, then the independent republic of Catalonia would be established–. After processing, it ended up becoming Law 19/2017, of 6 September, on the Self-determination Referendum, published in the Official Gazette of the Government of Catalonia on 6 September 2017, and Law 20/2017, of 8 September, on the Legal Transition and Establishment of the Republic, published on 8 September 2017. The agreements by the Bureau to approve the processing of these propositions as well as the agreements by the Plenary, were declared null by several orders of the TC (Constitutional Court) on 19 September 2017, asking the Prosecutor to draw conclusions by part of the Constitutional Court.

The Referendum Bill established an automatic declaration of independence and the creation of the Republic of Catalonia if the Yes vote obtained a majority in the referendum. The Law of transitional jurisprudence and foundation of the Republic was a kind of law for transitioning to a new State, which regulated the territory, the Catalan nationality, the succession of laws and public administrations, the rights and duties of the citizens, the system of government institutions, the legal authority, the finances and the constituent process.

The proposed Referendum Bill was presented as a bill proposal on 6 September 2017 by deputies Marta Rovira (spokesperson for Junts pel Sí) and Anna Gabriel (spokesperson for CUP).

The Law of transitional jurisprudence and foundation of the Republic proposal was presented as a bill proposal on 7 September 2017 by the defendants Lluís Corominas (president of the parliamentary group Junts pel Sí), Mireia Boya (president of the parliamentary group CUP), Marta Rovira (spokesperson for Junts pel Sí) and by 3 other deputies from CUP.

In spite of the reports issued by the Parliamentary Legal Council and its secretary general, who both stated that the approval of the processing of both bill proposals was contrary to the aforementioned prohibitive resolutions of the Constitutional Court and contravened the requirements expressly made to the Parliament Bureau to prevent or stop any initiative that in effect ignored or evaded the nullity of the parliamentary resolutions included in these new bill proposals, the Parliament of Catalonia Bureau included these bill Proposals in the respective daily agenda and approved the legislative initiative.

The Parliament Bureau approved to process these bills via the urgent procedure and rejected the request to reconsider both bill proposals, with the favourable vote of the defendants Carme Forcadell, Lluís Guinó, Anna Simó, Ramona Barrufet and Josep Joan Nuet in the case of the bill proposal for a referendum and of the first four defendants in the case of the legal transition bill proposal, with the abstention vote of defendant Nuet on this occasion.

The Statutory Guarantees Council of Catalonia, an institution of the Generalitat that makes sure the provisions passed by the parliament are compliant with the Statute and the Constitution (articles 38 and 76 of the Statute of Catalonia and Bill 2/2009), adopted two Plenary Agreements of 6 and 7 September 2017. These agreements stated I) the Parliament was notified regarding the mandatory nature, in the heart of the legislative procedure, of the opening subsequent to the publishing of any bill proposal of the period for requesting a decision from this Council, as part of the guarantee of the deputies in the exercising of their functions. And that the Bureau was responsible for sending these requests for a decision to the Council; and II) All bill proposals, without exception, that are being processed in the Parliament of Catalonia and before being finally passed, must be subject for review by the Council, given its mandatory nature, if it is so requested by legitimate individuals.

The Plenary of the Parliament, after a part of its present deputies abandoned the session after a debate where they expressed the illegality of the

proposed decisions, approved both proposals, which then became Bills 19/2017, of 6 September, on the Self-determination Referendum (DOGC 6 September 2017), and 20/2017, of 8 September on the Legal Transition and Establishment of the Republic (DOGC of 8 September 2017).

The agreements adopted by the Bureau of allowing the proposals to be processed as well as the agreements of the Plenary, which included the debate and voting of both proposals in the daily agenda of the sessions held on 6 and 7 September, eliminating the essential processes of the legislative procedure, were declared null by several Orders 123/2017 and 124/2017 of the TC (Constitutional Court) of 19 September 2017. Both resolutions were declared immediately enforceable after being published –which took place in the BOE numb. 229, of 22 September 2017– and they agreed for the Prosecutor to draw conclusions against the President of the Parliament of Catalonia, Mrs. Carme Forcadell i Lluís, the First Vice-president of the Parliament Bureau, Mr. Lluís Guinó i Subirós, the First Secretary of the Bureau, Mrs. Anna Simó i Castelló, the Third Secretary of the Bureau, Mr. Joan Josep Nuet i Pujals, and the Fourth Secretary of the Bureau, Mrs. Ramona Barrufet i Santacana, for failing to comply with the mandate of paragraph one of article 87.1 LOTC, in relation to the facts of allowing the processing of the bill proposals.

Both bills were appealed by the Government of the State and suspended by the Constitutional Court by rulings on 7 September 2017. Bill 19/2017, published in the BOE of 8-9-2017, was finally declared null by STC 114/2017, of 17 October, and Bill 20/2017 was also declared null by STC 124/2017, of 8 November. All the judicial orders of the Constitutional Court once again included the applicable warnings regarding the illegality of future decisions and the possibility of being held criminally responsible. The suspension rulings were personally notified with the applicable warnings to the members of the Bureau and the Government as well as other authorities (in this case, the members of the electoral council).

The following initiative was included in Resolution 807/XI, of 7 September 2017, which designated the members of the Electoral Council. This Resolution was suspended by a court order with the same date as that of the Constitutional Court –notified personally to the members of the Government, the Bureau and the Electoral council–, and coercive fines were imposed on the designated persons. Subsequently, the STC (Constitutional Court Judgement) of 31 October 2017 declared the Resolution null. The European Court of Human Rights in Strasbourg has declared inadmissible the lawsuit no. 70219/17 filed by one of the persons that was imposed a coercive fine

for being part of this electoral administration, in Ruling Aumatell i Arnau vs Spain of 11 September 2018.

Finally, the presentation of the results of the illegal referendum was requested on 4 October 2017 and this act was suspended by the ATC (Constitutional Court Ruling) of 5 October 2017. The Bureau met that same day. The Chief Council and the Secretary General provided warnings in writing that this action entailed applying rules that had been suspended by the TC. The Bureau agreed, with the favourable vote of its members Forcadell, Guinó, Simó and Barrufet, to allow the request and subsequently reject the request for reconsideration. ATC of 5-10-2017 admitted the appeal for legal protection against these agreements and provisionally suspended the effectiveness of these agreements. The Ruling was notified to the members of the Bureau, warning them once again of their duty to prevent or stop any initiative that in effect ignored the suspension.

On 6 October, the Government of the Generalitat, by means of a letter signed by the Vice-president of the Government of the Generalitat Oriol Junqueras, his spokesperson Jordi Turull and the Foreign Affairs Counsellor Raül Romeva notified the Autonomous Parliament of the result of the referendum, affirming that the "Yes vote" had won by achieving 90.18% of the cast votes.

On 10 October 2017, the president of the Generalitat appeared before the Plenary of the Parliament and declared that, respecting the sovereign will of the people of Catalonia, he should declare their independence as a State in the form of a republic, proposing the immediate suspension of the effectiveness of this declaration to negotiate with the Spanish State. The deputies of the pro-independence parties signed a declaration outside the Parliament recognising the effects of this declaration of independence in accordance with Law 20/2017, which set forth the effectiveness of the Law of transitional jurisprudence and foundation of the Republic and the beginning of a constituent process, the will to initiate negotiations with Spain on equal footing as well as the need to notify international and European Union bodies regarding the birth of the new State, the Government of Catalonia was urged to grant full effectiveness to the previous declarations and the people were called to carry out the actions that would fulfil this collective aspiration.

On 27 October (even though STC 114/2017, of 17 October had already come into effect, BOE of 24 October, nullifying Law 19/2017 on a referendum) the defendants Lluís Corominas (president of Junts pel Sí and member of the Parliament Bureau until 25 July 2017) and Mireia Boya (president of the parliamentary group CUP), along with deputies Marta Rovira and Anna Gabriel (spokespersons of the parliamentary groups Junts

pel Sí and CUP respectively) presented to the Parliament Bureau two resolution proposals for vote at the Plenary: the first was for the purpose of declaring the independence of Catalonia with the exact content as that of the aforementioned declaration made by the pro-independence deputies outside the Parliament and the second, the start of a constituent process for the new republic with the creation of an advisory council and culminating with the convening of a referendum on the text of the Catalan Constitution.

The proposals were processed with the same support by the Bureau as shown towards the last proposal (vote against by Nuet and in favour by the rest of the defendants) and were subsequently voted by 82 of the 135 deputies comprising the Parliament. The rest of the members of the Parliament abandoned the chamber expressing the illegality of the proposals.

The vote took place at the request of member of Parliament Roger Torrent Ramió (current President of the Parliament), a ballot box was made and the vote was kept secret for the participating members of the Parliament.

The declaration of independence was approved with 70 votes in favour, 10 against and 2 abstentions –of a total of 135 autonomous deputies– and it never was put into practice given that, as will be stated further along, that same 27th of October, the Plenary of the Senate approved the necessary measures to guarantee compliance with the constitutional obligations and to protect the general interest by part of the Generalitat of Catalonia (BOE of 27 October 2017), and ordering the immediate cessation of all members of the Government of the Generalitat, the dissolution of the autonomous Legislative Chamber and the convening of regional elections to elect a new Parliament.

4. The actions of the Government of the Generalitat.

The members of the regional Government referred to in this indictment had the role of making the executive decisions required to guarantee a referendum was held.

Previously, in a series of meetings held in 2015 and 2016 –always in a confidential manner– attended by members of the Government of the Generalitat, officials of the regional Administration and some relevant personalities related with the pro-independence sector, a decision was made to hold a self-determination referendum in Catalonia, regardless of whether

or not it was authorised by the State, to which article 149.1 32nd of the Spanish Constitution exclusively attributes this power.

The most important milestones of this process –of which the defendants were protagonist– of holding an illegal consultation followed by a declaration of independence, are going to be described below.

Parallel to the parliamentary activity described above, on 9 June 2017, the president and the vice-president of the Generalitat, after meeting with the entire Governing Council, at the courtyard of Les Tarongers of the Palau of the Generalitat, posed the question that was going to be formulated in the self-determination referendum and decided on 1 October as the date to hold the referendum. They were accompanied by all members of their Government, by the President of the Parliament, the aforementioned members of the Bureau and several members of Parliament from Junts pel Sí and CUP.

In mid July 2017 Mr. Jordi Jané was replaced by the defendant Joaquim Forn Chiariello as head of the Department of Home Affairs, thus ensuring they headed the Department –in charge of the regional police– a person that would support the holding of the referendum. Immediately thereafter, Albert Batlle, who until then had been the General Director of the Police of the Generalitat, also submitted his resignation. For the same reason and during the same time, the Counsellors of Education, Meritxell Ruiz Isem, and of the Presidency, Neus Munté Fernández, were also fired and replaced by Clara Ponsatí and defendant Jordi Turull. Also at that time, the Counsellor of Industry Jordi Baiget was dismissed after having stated in an interview that he considered the holding of a unilateral referendum to be irresponsible.

It was during that same month of July 2017 when the Government of the Generalitat passed Decrees 108/17, of 17 July and 110/17, of 18 July which restructured the competencies of the different Departments or Ministries, so the administration of the electoral processes would now fall entirely under the Vice-presidency of the Generalitat, who was Oriol Junqueras.

On 6 September 2017, after the Parliament of Catalonia passed Law 19/2017, on the self-determination referendum, all members of the Government of the Generalitat (President, Vice-president and 12 Counsellors), signed Decree 139/2017, for holding the referendum. The Plenary of the Constitutional Court, via the order of 7 September 2017, suspended its application –with the applicable personal warnings issued in order to prevent non-compliances and regarding the possible criminal

responsibilities— and via STC 122/2017, of 31 October 2017, the Decree was declared unconstitutional and null.

Also on 6 September 2017, at the proposal of the Department of the Vice-presidency and Economy and Finance of the Generalitat of Catalonia, the regional Government passed Decree 140/2017, of 6 September, on the supplementary rules for holding the Self-determination Referendum of Catalonia, which contained the provisions on the electoral administration – through the electoral councils—, creation of a census, designation of the officers and controllers of the polling stations, institutional and electoral campaign with the use of public spaces and the media, voting in person and from abroad, ballot boxes, electoral documentation, ballot count, collaborating staff of the electoral administration, international observers and administration or effect on the jobs of the participants. The Decree was signed by the President of the Generalitat as well as by the Vice-president of the Government and Counsellor of the Economy and Finance, defendant Oriol Junqueras Vies. The Plenary of the Constitutional Court, via the order of 7 September 2017, suspended its application –with the mentioned warnings and personally notifying the members of the regional Government as well as numerous authorities— and subsequently issued ruling STC 121/2017, of 31 October 2017, declaring the Decree unconstitutional and null.

The Civil and Criminal Chamber of the Supreme Court of Justice of Catalonia, as preliminary Proceedings 3/2017, was handling the different lawsuits filed by the Prosecutor's Office against the members of the Government of the Generalitat, for allegedly disregarding the aforementioned orders issued by the Constitutional Court, especially regarding the warning issued to the members of the Government to refrain from carrying out any action that would allow preparing or holding the referendum scheduled to take place on the 1st of October. The Court Order of 27 September 2017 was issued at these Proceedings, ordering the following:

"Ordering the Mossos d'Esquadra, Guardia Civil and National Police to carry out the following:

.- Prevent, until 1 October, the use of public spaces or buildings –or any spaces used to provide any type of public service— aimed at preparing to hold the referendum.

On this date, prevent opening these spaces, or if applicable, close all spaces that may have been opened.

In the event that the actions in preparation of the referendum or voting on the 1st of October take place at buildings with shared installations or public services in operation that day or on previous dates, only those spaces conducting the preparatory actions or where the voting will take place on the 1st shall be closed, being careful to not affect the rest of the spaces, which shall continue to provide their appropriate services.

.- Seize all materials related with the referendum, which may be in the process of being delivered or may be located inside the spaces or buildings, including computers used as an instrument for committing the crimes that are being investigated.

.- Also, the activity and/or opening of public spaces that are used as logistic infrastructure and/or calculation shall be prevented such as processing centres, reception centres and counting or voting management centres.

Mossos d'Esquadra, Guardia Civil and National Police must act together to ensure the effectiveness of the order, providing the relief and support required for a strict compliance with the orders provided herein and in following the provisions stipulated in article 46.2 of the Security Forces Organization Act and article 2.3 a) Decree 770/2017 of 28 July.

Ensure the respective heads of the Mossos d'Esquadra, Guardia Civil and National Police are appropriately notified."

At the behest of the presidency of the Generalitat, the Autonomous Community Security Board met on 27 September to address the holding of the referendum without reaching any type of agreement considering the antagonistic positions of the representatives of the State and the Generalitat. In representation of the central Government, the aforementioned meeting was attended, among others, by the Secretary of State for Security, the Delegate of the Government in the Autonomous Community, the General Technical Secretary of the Ministry of Home Affairs and the Director of the Coordination Cabinet of the Secretary of State.

On 28 September 2017, the leadership of the Mossos d'Esquadra police force met with the president of the Generalitat of Catalonia, its Vice-president defendant Oriol Junqueras and the Counsellor of Home Affairs Joaquim Forn. At this meeting they considered the public safety problem that could arise on the 1st of October due to the large number of organisations mobilised on that date (among these, 42 Committees for the Defence of the Referendum, students, fire departments, farmers, etc. and possible organisations positioned against the event) and proposed suspending the vote on the 1st of October. In spite of this and aware of the instructions provided in the Ruling of 27 September 2017 issued by the Supreme Court of Justice of Catalonia and the Rulings of the Constitutional Court that we have been mentioning herein, they made the decision to move forward with

the referendum. Thus, in the report drafted by the General Information Office, released in Sabadell on 28 September 2017, stated that "*the self-determination referendum of Catalonia shall be held on 1 October 2017.*" And effectively, as is well known, the consultation took place on 1 October in spite of the legal prohibition issued by the Supreme Court of Justice of Catalonia.

5. Actions of the pro-independence civil organisations and organised groups. Social demonstrations as a means for achieving the objectives related with breaking the law and disobeying the administrative and judicial resolutions. Primarily, the events occurred on 20 and 21 September and 1 October 2017. Actions against the legitimate judicial decisions and against the actions of the authorities or public servants that attempted to comply with the judicial decisions.

We have already said that on 30 March 2015, the pro-independence political parties widened their sphere of action to other pro-independence groups with the signing of the Roadmap by the representatives of Omnium Cultural, Asamblea Nacional Catalana and Asociación de Municipios por la Independencia. We have also mentioned that on 12 April 2015, Asamblea Nacional Catalana drafted a document outlining their specific actions for the years 2015 to 2018 setting the following objectives: coordination with the Autonomous Government to achieve the aforementioned objectives and heading the social demonstrations since they considered that, in response to the reaction of the Spanish State, the people must be seen as the political agent to promote the independence process.

Gatherings intended to build social support for the independence process became an essential tool for reaching the set goals:

Already in the Diada (National Day of Catalonia) on 11 September 2015, under the motto *Via lliure a la República Catalana* (Clear path for the Catalan Republic), defendant Jordi Sánchez, in the presence of defendant Jordi Cuixart and other pro-independence political leaders and before a multitude of hundreds of thousands of citizens, said: "*We have decided that we are leaving. And we'll do it as quickly as possible, with the legitimacy of the people and the mandate at the polls*" (Report 15.12.17 f. 83).

At the Diada of 2016, under the motto "*A punt*" (Ready), in front of nearly 400,000 demonstrators in Barcelona, according to the organisers, defendant Jordi Sánchez, called for the right to hold a vote in 2017 and, along with defendant Jordi Cuixart, appealed to secessionist unity and encouraged the President of the Catalan Parliament to engage in disobedience if the Constitutional Court sanctioned her for allowing a parliamentary vote that would open the door to convene the unilateral referendum (Report 15.12.17 f. 83 and Annex 3 to the supplementary report 1/2/2018).

In another demonstration organised by the ANC on 13 November of that same year, which was attended by the senior leaders of the pro-independence parties, defendant Jordi Sánchez stated that Catalonia would not remain indifferent to the arrest orders or the trials of its elected leaders, adding that the moment of truth was approaching and that a permanent mobilisation had begun.

During the procedure that was followed by the Supreme Court of Justice of Catalonia as a result of the holding of the referendum of 9 November 2014, the three sovereign entities ANC, Òmnium and AMI, announced demonstrations against the judicial actions that were to start on 6 February 2017. These calls to action indicated that the citizens had a chance to show that they were willing to make personal sacrifices to stand by the President and the other defendants, adding that the time for festive demonstrations was over. And in carrying out these initiatives, ANC organised a demonstration that same 6 of February in which Spain's justice system was asked to relinquish its jurisdiction over Catalonia.

On 11 June 2017 a new mass demonstration was organised where a manifesto was read encouraging the participation and the demonstration of all people in favour of independence. Defendant Jordi Cuixart ensured that the pro-independence organisations would guarantee that the referendum that was to be held would be binding because otherwise there would be consequences the day following its celebration. Jordi Sánchez addressed the Government of Spain declaring that the only way to prevent the referendum was to engage in improper acts, since the will of the people was to move forward and not backwards.

During the Diada of 11 September 2017, which took place immediately after the Catalan Parliament passed Bill 19/2017 on the Referendum, which was suspended by the Constitutional Court, these entities organised a demonstration under the motto *Referéndum es democracia* (Referendum is democracy) with the participation of the president of the Generalitat, most of

the Government Counsellors and the President of the Parliament Carme Forcadell. In public speeches, Jordi Sánchez addressed all those gathered saying that the people on the streets had won once again and thanked the politicians for not failing them by passing the Referendum Bill and the Disconnection Bill, proclaiming that they only needed to obey the Catalan Government.

As part of this mobilisation strategy, on 20 September 2017, the defendants Jordi Sánchez and Jordi Cuixart, using their own Twitter accounts and those of the organisations they lead, called on the population to demonstrate in front of the office of the Ministry of Vice-presidency, Economy and Finance of the Generalitat of Catalonia, located at numbers 19-21 of the Rambla de Catalunya in Barcelona. The reason was that the Judicial Police Force of the Guardia Civil of Barcelona, ordered by the Examining Court no. 13 of this city, had conducted a series of arrests and had begun searching the installations of the Ministry of Economy and Treasury with the aim of finding items and data that would allow determining the responsibilities derived from the organising of the referendum scheduled to take place on 1 October and thus prevent it from taking place.

Organisations ANC and Omnium, through Website www.cridademocracia.cat –specifically on sub-page www.cridademocracia.cat/whatsapp/– offered the option of joining WhatsApp groups used for organising demonstrations and therefore be permanently connected, receive alerts and remain organised if needed. In fact, on 20 September, Omnium Cultural, via WhatsApp, at 8.55 am, called on the people to gather in front of the Vice-presidency Department of Economy and Finance as well as in front of the Ministries of the Exterior, Welfare and Family and Governance, with the result described below.

The messages stated that the Guardia Civil was conducting an operation to prevent the referendum and they also provided the location where the judicial search was being conducted; they called on the people to defend the Catalan institutions and demanded that the Guardia Civil free the people that had been arrested and also asked the Catalan people to demonstrate, stating that law enforcement could not handle all of them or that law enforcement had made a mistake and had declared war on those that wanted to vote.

The Guardia Civil agents assigned to the Judicial Commission arrived at the Ministry at about 8.00 am on 20 September 2017 and parked their vehicles in front of the entrance to the building. Shortly thereafter, people began to

gather and at 10.30 that morning, demonstrators had completely surrounded the building, preventing the judicial commission to carry out their normal duties.

Under the sole protection of the two Mossos d'Esquadra assigned to carry out the regular monitoring of the access to the building and who did not receive any type of reinforcement during the day except for the arrival of mediation agents, in spite of having requested the arrival of specialised Units on at least five occasions, the events developed with the presence of up to 60,000 demonstrators at some times, with many of them pushing and nearly knocking down the entrance door to the building in a heated and hostile environment.

The safety perimeter requested by the Judicial Commission was not set, so in order to move past the thousands of demonstrators that were gathered, there was no other way than to walk between a thin human passage that only allowed moving in a single line and which was not a police controlled cordon since it was formed by volunteers from the organisers (Asamblea Nacional Catalana), who were wearing vests identifying them as members of that organisation. The organising entities assembled a platform and distributed water and sandwiches between the people gathered there.

The demonstrators prevented the Guardia Civil from taking the detainees inside the building (who were required to be present during the police search as required by procedural law) and from carrying out the judicial order in the usual manner. The vehicles of the Guardia Civil, three Nissan Patrols with official designations and license plate numbers PGC-5313-N, PGC-2446-N and PGC-5314-C, and four camouflaged vehicles Renault Megane PGC-8401-C, Ford Focus PGC-8019-C, Renault Laguna PGC-6504-B and Hyundai I20 PGC-8784-C, suffered important interior as well as exterior damage.

Only at about midnight, were they able to prepare an exit so that the Court Clerk of Examining Court no. 13 could leave safely by infiltrating her between the spectators that were leaving the theatre that is located in the adjacent building, which was accessed through the rooftops of the buildings. The remaining Civil Guard officers had to wait until the demonstration broke up and left in two groups; one at 4 am on 21 September, and the other at 7 am that the same day.

During the riots, defendant Jordi Sánchez acted as the spokesperson for the demonstrators before the acting police agents and established conditions for him to carry out this function. He refused to let the Guardia Civil agents take the detainees inside the building unless the agents of the Judicial Commission agreed to take them by foot between the turmoil and also refused to let the Guardia Civil agents use their police vehicles unless they agreed to access the vehicles by foot without providing any guarantee of protection while they were to walk between the masses, to the location where their vehicles were parked.

When defendant Jordi Cuixart arrived at that location, they both addressed the crowd on several occasions to direct their actions. This way, the evening of the 20th, Cuixart addressed the demonstrators and demanded the release of all detainees and challenged the State to come and seize the materials that had been prepared for the referendum and which they had hidden in certain spaces.

After this intervention, defendant Jordi Sanchez addressed the crown and thanked them for the trust they had placed in the sovereign organisations. He reminded them that these organisations had promised they would take to the streets to defend the institutions when required and that they were there. He stated that this was the day and that the moment had come to take to the streets to defend the dignity, the institutions and the referendum and that either Rajoy, the Constitutional Court or all the State Security Forces could stop them. And he assured that moments ago he had met with Carles Puigdemont and that the president had assured him that the referendum would be held. He concluded by asking that nobody go home yet since they had a "*long and intense night*" ahead of them and that they had to work together because they were the dream of a new country.

At around 23.41 pm, both defendants Jordi Sánchez and Jordi Cuixart, standing on top of one of the official vehicles of the Guardia Civil, addressed the crown once again: Cuixart said he was speaking on behalf of the sovereign associations as well as for PDeCat, ERC and CUP-CC, proclaiming they "*were all exalted*" to fight for their liberty and stated that from that altar (in a clear reference to the police vehicle) Jordi Sánchez and himself wanted to ask all present to permanently demonstrate in defence of the detainees, summoning them to a demonstration that would take place at 12.00 am the next day at the Supreme Court of Justice of Catalonia; on his

part, Jordi Sánchez re-addressed the crowd saying that neither the Constitutional Court, nor Rajoy, or the Guardia Civil or anybody was going to stop the mobilisation that day, he asked them to go to the demonstration the following day at the Supreme Court.

These actions were provoked, convened, directed and desired by the defendants Sánchez and Cuixart, who kept the demonstration going until midnight –time which had previously been communicated as its conclusion–, then calling to engage in a permanent demonstration and going to the Supreme Court of Justice of Catalonia on the next day to demand the freedom of the people that had been arrested.

Also, these actions were known, allowed and desired by the rest of the defendants, some of which physically went there at some point throughout the day, like Oriol Junqueras or Carme Forcadell, who at no time called on the protesters to leave nor did they call on to restore the public order.

Similar actions focussed on preventing the normal operation of the Administration of Justice took place during two other searches and detentions ordered by the aforementioned Examining Court no. 13.

Thus, during the search of the home of José Maria Jové, 400 people gathered and for about 15 minutes, prevented the police vehicle from leaving. During the search of the Department of Foreign Affairs office, located at vía Layetana 14, the gathering of 200 people with a hostile attitude prompted the Guardia Civil to remove the Court Clerk from the Administration of Justice inside a camouflaged car. When detainee Xavier Puig Farré was taken outside the building, the persons gathered there tried to free him from the control of the agents and the official vehicle was shaken and beaten. During the search of the industrial buildings located at numbers 17, 18 and 19 of Urbanisation Can Barris, carrer S, de Bigues i Riells (Barcelona), the hostile actions of a group of 200/250 people that were gathered outside, prompted the Court Clerk of the Administration of Justice to leave the building inside a camouflaged vehicle and 8 vans carrying seized materials were damaged. Also, incidents occurred during the searches conducted at Berga and at the Guardia Civil barracks of Manresa and Reus.

The defendants Junqueras, Turull, Rull, Romeva, Bassa, Forn, Forcadell, Sánchez and Cuixart, through social media, sent messages expressing their solidarity, affection and commitment as well as expressions of gratitude, encouraging active participation in the referendum that had been declared illegal, and stimulating the mass presence of citizens at the poll stations in spite of knowing that the State Security Forces had received a judicial order

from the Supreme Court of Justice of Catalonia to prevent the referendum from being held.

This way, Oriol Junqueras, that same day on 27 September 2017, addressed the students telling them that they were essential for implementing the Republic, adding that "this was a matter of democracy, civil and social rights" and that the country was proud of them; Raül Romeva, from Diplocat, invited 33 deputies from 17 countries to act as international monitors of the illegal act; Carme Forcadell received that delegation at the Autonomous Parliament and declared that "*the Mossos d'Esquadra did not accept the control by the State ordered by the Prosecutor's office*"; Joaquim Forn stated that "*against the discourse of fear made by the Spanish State we say we will vote on 1-0*"; and on 27 September 2017, he added that "*the Police and the Guardia Civil had come to Catalonia to disrupt the public order and that all those departures of police from locations inside the Spanish State as if they were going to war was beyond them*"; Josep Rull on 21 September 2017 stated that he had prevented a ship from docking that was going to lodge members of the National Police in the bay of Palamós; Jordi Sánchez and Jordi Cuixart, on 22 September 2017, in different audio-visual and written communication media called on the people to mobilise indefinitely; Jordi Turull stated that "*1-0 is in the hands of the people*" and that "*on 1-0 independence is at stake*"; Jordi Cuixart, on 27 September 2017, stated "*if the yes vote wins, then the republic would have to be proclaimed*" and on 29 September 2017, he added "*long live the Catalan democratic revolution, mobilise to defend the referendum, starting this evening, everyone to the polling stations,*" initiating the so called "jornada de Escoles Obertes" (the Open Polling Stations Session); on 29 September 2017, Dolors Bassa took the control of the polling stations away from the public servants of the Education and Labour Departments she headed, ensuring these centres would be available.

On 21 September 2017, 20,000 people gathered before the office of the Supreme Court of Justice of Catalonia, convened by Jordi Sánchez and Jordi Cuixart to protest the judicial decisions adopted to prevent the celebration of the referendum that had been declared illegal by the Constitutional Court, and defendant Carme Forcadell addressed the crowd in a speech demanding the detainees be set free.

At the Guardia Civil barracks of Travesera de Gracia, location where the detainees were held in custody, 300 people gathered and were successful in stopping the traffic.

Hostile gatherings of people occurred that same day in front of the barracks of the Guardia Civil and National Police at Manresa, and the barracks of Sant Andreu de la Barca was surrounded.

In the City of Justice, when the detainees were placed in judicial custody, about 2,000 people gathered, including the defendants Forcadell, Romeva, Junqueras and the escaped Comín and Rovira.

On 22 September 2017 people gathered in front of the barracks of the Guardia Civil of Carnovelles, Vilanova and Ripoll, and the DNI offices of the National Police of Barcelona were covered with wallpaper.

Regarding the voting on 1 October the defendants Jordi Sánchez and Jordi Cuixart encouraged citizens, via Twitter messages and the media, to occupy the voting centres before the time when the regional police was ordered to act and urged them to prevent the police agents from closing the centres and seizing electoral materials. They also encouraged citizens to vote en masse –despite the express and clear prohibition imposed by the Constitutional Court and the Supreme Court of Justice of Catalonia– and encouraged them to protect efforts to count the votes against any actions that might be taken by State Law Enforcement Officers.

After the incidents against the public order we have mentioned above, which occurred in response to the different judicial searches, the call made via the media for people to go and vote on 1 October, made by the aforementioned members of Government and by Sánchez, Cuixart and Carme Forcadell, was logically made while fully aware of the illegality of the act and that these actions could cause altercations, riots and disturbances.

On 4 September 2017, for example, Marta Rovira –in a procedural situation of default– wrote "*If the State directly attacks the essential elements of the referendum such as the ballot boxes, the polling stations or the electoral coordinators, we must react, we will mobilise citizens to ensure this does not occur... and the polling stations can open as normal.*" Comín –in the same procedural situation– said in newspaper ARA that "*The State must repress the referendum on 1-O and the people will not stay home.*" Cuixart, on 27 September 2017, said in El País: "*If we are accused of sedition for calling on the people to permanently mobilise, Mr. prosecutor, you are right, permanent mobilisation, everyone to the streets.*"

As a consequence of this call on the citizenship, before 6 am on 1 October –and in many cases, before this time, throughout the weekend–, a large number of organised people, convened for this purpose by the defendants, occupied the polling stations and locked themselves up inside them with the aim of resisting the action of the police as ordered by the judicial court.

In Preliminary Proceedings 3/2017 before the Supreme Court of Justice of Catalonia, a ruling was issued on 27 September 2017 and thereby the Investigating Judge in the case ordered all Law Enforcement (of the State and the region) to prevent the opening of the polling stations, seize electoral materials and prevent the referendum from taking place under the aforementioned terms.

For this purpose, many National Police and Guardia Civil officers, approximately 6,000 agents, were deployed to Catalonia to comply with the judicial order and prevent the law from being broken.

Under these circumstances, the defendants decided to continue with the strategy of not complying with the judicial order, breaking the law and holding the consultation, even though it was evident that the day would not end without altercations and unrest.

As expected, in effect, throughout the day, acts of resistance and disobedience occurred against the legitimate mandates of the Public Forces as well as numerous situations creating tension and resulting in unrest and confrontations.

On 3 October the regional Government carried out several acts in support of the general strike organised by Taula per la Democràcia, with the support of organisations ANC and OC. Specifically, defendant Dolors Bassa issued an Order on 29 September 2017, which in its article 4 stipulates that the "*parties must publicise the strike so that it is recognised by the people*" and subsequently through a written letter from the Labour Department, she indicated that "*the Government will adhere.*" This strike day resulted in the cutting-off of 116 roads and railways, and it is worth mentioning that among these, 100 people cut-off the AP-7 in both directions and that 400 people cut-off the AP-7 south of Barcelona, creating traffic chaos.

On 8 November there was another general strike called by Intersindical-CSC (specifically by Carlos Sastre) and supported by ANC and OC. During the

strike, 77 roads were blocked, including the AP-7 and the A-2.

6. In the face of the serious illegality that had occurred, on 11 October 2017 the Prime Minister of Spain sent a request to the President of the Autonomous Community requiring him to fulfil his constitutional obligations. On 19 October, the President of the Generalitat informed the Prime Minister that the Parliament of Catalonia was going to go ahead with a vote on the declaration of independence. The situation led to the calling of an emergency meeting of the Council of Ministers which on 21 October initiated the process to apply Article 155 of the Constitution and proposed the approval of a series of measures to the Spanish Senate in order to restore constitutional order. On 27 October, as stated, the Catalan Parliament following the route already marked out, made a declaration of independence for Catalonia and its establishment as a new State in the form of a Republic. The Spanish Senate in Plenary Session, noting *"the extraordinary seriousness of the non-performance by the Institutions of the Generalitat of Catalonia of their constitutional duties and the carrying out by them of acts gravely prejudicial to the common interest,"* passed a Resolution on 27 October 2017 approving the measures necessary to ensure the fulfilment of constitutional obligations and for the protection of the common interest by the Generalitat of Catalonia (BOE 27 October 2017), which included the immediate removal from office of all members of the Government of the Generalitat of Catalonia, the dissolution of the autonomous Legislative Chamber and the calling of autonomous elections to form a new Parliament.

B) The use by the Government of the Generalitat of public funds to organise and hold the illegal referendum. The offence of misuse of public funds.

The facts described gave rise to the incurring of financial obligations against the public purse constituted by the Catalan Treasury, some of which were paid and some not, standing as debts of the public purse –or creditors’ rights seen from the other perspective of those who supplied what they had contracted to supply with representatives of the Generalitat–. It could go without saying that the process described in the previous paragraph could not have been carried out without incurring the corresponding public expense. Expenses such as advertising by government bodies, the organisation of electoral administration, compilation of the register of overseas Catalan voters, electoral material, paying international observers, computer systems, counting centres, etcetera. To that end, and in light of the experience of the consultation of 9 November, which ended with the principal responsible figures in the Government of the Generalitat being called to account before the Court of Auditors, the notion was formed of dodging, or sidestepping state control over the accounts of the Generalitat, control to which the Autonomous Communities had willingly submitted in order to obtain funding from the State at a

time when they were in financial hardship. We can see the legal basis of that control in the 1st Additional Provision of Organic Law 2/2012 of 27 April on Budgetary Stability and Financial Stability and in Article 22.3 of Royal Decree-Law 17/2014, which governs the Autonomous Liquidity Fund (FLA).

All this activity of organising the referendum is being investigated by the Examining Court no. 13 of Barcelona in previous proceedings 118/2017 for the suspected authors not subject to special provincial rights, where there has not been ascertained any basis for determining that the matters investigated are related to those investigated in this Special Case or in the cases conducted before the High Court of Justice of Catalonia. The actions ordered by that judicial body, above all actions of entry and search, have led to the discovery of essential evidence which, duly attested and introduced in plenary session of this Special Case, demonstrate the unlawful activities carried out for the holding of the referendum, both in terms of logistics and of finance. Indeed, on the occasion of some of these judicial acts of entry and search, carried out by the Unit of the Judicial Police of the 7th Zone of the Guardia Civil and the corresponding Court Clerk of the Administration of Justice there was public disorder, in which organised groups and ordinary people, mobilised to that end through social media, sought to prevent or prevented the execution of the legitimate orders of the judicial authority aimed at confirmation of the commission of the offences.

It is not necessary to list out the very many articles to which we have referred, both from Law 2/2012 and from Royal Decree-Law 17/2014, and it is sufficient to say that those provisions allow –no require– the Autonomous Communities that need cash flow for the payment of their debts, entitle them to receive payments from the State on each occasion and whenever they periodically provide the economic-financial information listed (public guarantees, commercial debts, derivative transactions and any other contingent liabilities), assume obligations and implement plans that lead to budgetary stability and to the fulfilment of the objectives of the public deficit and the issuance of public debt, payments to suppliers, fulfilment of the law in relation to late payment and other European legal provisions in these areas. This brings with it the obligation to fulfil those obligations of the periodic provision of information and the achievement of objectives through plans approved by the State, the requirements of which may be supplemented or widened by the Ministry of Finance according to the specific circumstances of a given Autonomous Community and establishes the consequences of non-fulfilment of those obligations.

In application of these provisions –which have been set out in summary form, since they are not the subject of this indictment–, and in light of the events described and the very grave risks that they might represent for the financial stability of the Autonomous Community, the Cabinet Committee for Economic Affairs adopted various measures to strengthen the instruments of control over the accounts of Catalonia which continued to intensify as the non-performance by the authorities of the Autonomous Community became more serious, culminating in the adoption of the Senate Resolution of 27 October 2017 for the application of Article 155 of the Spanish Constitution.

In 2015, when the issued debt of the Generalitat of Catalonia was rated by private rating agencies as a speculative investment or "junk bonds" and it became known that debts to pharmacies and other suppliers had not been met, the Cabinet Committee for Economic Affairs adopted its Resolution of 20 November 2015, published under Order PRE/2454/2015 dated 20 November (BOE, 21 November 2015) *on measures to ensure the provision in the Autonomous Community of Catalonia of public services in defence of the common interest*. Obligations for the periodic provision of information were imposed on the whole public sector of Catalonia, as were restrictions both on the payment of invoices through the Autonomous Liquidity Fund and on the purposes for which the monthly payments to the Autonomous Community by way of financing could be used. Among other measures, it was provided that the Autonomous Community should use the amounts received monthly from State funds for the provision of specific essential public services (family, health, education...). There was similarly imposed a system of payment from the Autonomous Liquidity Fund under which the corresponding amounts would be paid directly by the State to creditors in respect of fundamental and priority public services (security, law and order...) against invoices submitted and without passing through the Autonomous Community. This resolution, still in force, was not challenged and pursuant to it the obligations for the periodic provision of information and certification continued to be met until September 2017.

In view of the annulment by the Constitutional Court of resolutions and statutory provisions adopted by the Parliament of Catalonia and of certain budgetary provisions of Law 4/2017 of 28 March on the Budgets of the Generalitat of Catalonia, intended for the holding of the referendum, and taking into consideration the increase in the risk premium of the Autonomous Community and the relationship of this increase with the resolve expressed by several politicians in office, accused in this Special Case, in relation to the referendum process, the Cabinet Committee for Economic Affairs adopted a second Resolution dated 21 July 2017 published under Order PARA/686/2017 dated 21 July (BOE, 22 July 2017), *under which new*

measures are adopted to ensure the provision in the Autonomous Community of Catalonia of public services in defence of the common interest and the fulfilment of the Constitution and the Law.

Is interesting to read in the preamble to the Resolution the reasons which lead to the introduction of these new measures:

The foregoing notwithstanding, in recent weeks, there has been a series of new events which show that it is necessary to strengthen the monitoring of economic-financial information from the Autonomous Community of Catalonia. The Resolution of the Constitutional Court of 4 April 2017 under which the unconstitutionality application submitted by the Prime Minister was accepted onto the Court list, provided for the suspension of the validity of Additional Provision 40, Paragraphs One and Two of Law 4/2017 of 28 March of the Parliament of Catalonia on the Budgets of the Generalitat of Catalonia for financial year 2017 and of various budgetary allocations, to the extent that they were intended to cover the costs of the calling of the referendum referred to in the Additional Provision. The Resolution was personally served on the office-holders mentioned in its Paragraph 4, among them the Auditor General of the Generalitat of Catalonia.

Subsequently, on 5 July the Constitutional Court gave judgement in which it decided to declare the unconstitutionality and nullity of Additional Provision 40 of Law of Catalonia 4/2017 of 28 March on the Budgets of the Generalitat for 2017, with the scope determined in its 12th Legal Basis. Similarly, it declares that budgetary allocations GO 01 D/227.0004/132, DD 01 D/227.004/132 and DD 01/22700157/132 of Programme 132 are unconstitutional where they are for the financing of the referendum process referred to in Additional Provision 40 of that Law.

In this regard, in the last certification delivered on Thursday 13 July 2017 by the Auditor General of the Autonomous Community of Catalonia, it is certified that at the end of June 2017, obligations have been recognised in Programme "132. Organisation, management and monitoring of electoral processes" in an amount of €19,370 and that authorisations and expenditure measures have been registered in an amount of €25,520 (€6,150 more than the figure for the previous month).

In this regard, paragraph IV.6 of the programme of the Autonomous Liquidity Fund applying to the 2017 financial year relating to increased monitoring, provides for the provision of specific additional information, including "Specific monitoring in the detail specified of the state of incurring of public expenditure of a Community and its dependent bodies, and specific expense lines which, because of their amount, development, financial nature or purpose, the Ministry of Finance may determine should be subject to special monitoring in relation to a given Community."

In light of the new circumstances described, and bearing in mind the purpose of the expense lines mentioned, on 18 July 2017 the Autonomous Community of Catalonia was required to provide a specific report from the Office of the Auditor General of the Community on the actions taken by that Office or any dependent bodies in relation to the expense files processed against Programme "132. Organisation, management and monitoring of electoral processes" in the general budgets of the Community for the 2017 financial year and on any non-compliance with the Resolution of the Constitutional Court annulling the validity of the budgetary allocations called into question, and on any completed expense files processed

against Programme "132. Organisation, management and monitoring of electoral processes" in the general budgets of the Community for the 2017 financial year.

To these indicators of risk should be added recent declarations by some representatives of its institutions of their determination to continue with the referendum process, which has exposed the stability and proper functioning of the Public Administration and other institutions of the Autonomous Community of Catalonia to new risks and has generated a new situation of economic uncertainty which is harming the public and businesses and hence financial stability. Proof of this is the loss of confidence that it has caused in investors over recent days, as reflected in Catalonia's risk premium and its inability to finance itself in the markets.

In response to the situation described, the Cabinet Committee for Economic Affairs, with the aim of continuing to ensure the proper functioning of fundamental public services, in defence of the common interest, considering the Judgement of the Constitutional Court of 5 July 2017, adopts additional measures for the Autonomous Community of Catalonia relating to the development and implementation of additional financing mechanisms which will be applied in addition to those provided in the Resolution adopted by the Cabinet Committee for Economic Affairs on 20 November 2015 on measures to ensure the provision in the Autonomous Community of Catalonia of public services in defence of the common interest, which will remain in force and in full effect, and which requires that in addition to the initial and monthly certificates mentioned in that Resolution a new weekly certificate under this Resolution is provided.

To these ends, we should remember that as a consequence of participating in the Fund for Finance to the Autonomous Communities, through the Autonomous Liquidity Fund compartment, as provided in First Additional Provision of Organic Law 2/2012 of 27 April, on budgetary stability and financial sustainability and in Article 22 of Royal Decree-Law 17/2014 of 26 December on measures for the financial sustainability of the Autonomous Communities and local entities and others of an economic nature, the Autonomous Community of Catalonia has accepted the obligation to comply with the requirements of any provision that arises under this financing mechanism."

In this Resolution the controls were strengthened, with weekly certificates required of the auditors of the various ministries and economic-financial office-holders (Auditors, Director General of Budgets, Director General of Financial Policy, Insurance and Treasury), in the sense that they were required to state on each certificate that "there has not been commenced or processed any budgetary modifications, or expense or payment authorisation which might be intended for the carrying out of activities linked to the calling of the referendum declared unlawful by the STC (Judgement of the Constitutional Court) on 5 July 2017. In addition to these information obligations, the Office of the Auditor General of the Autonomous Community had to send every Wednesday to the Secretary General of Autonomous and Local Financing on behalf of the Ministry of Finance a final certificate, attaching the individual certificates, and to notify any query raised with that Office or with any consultative or advisory body the purpose of which was to define procedures that would allow the financing of the referendum project.

In this context, each and every one of the Ministries of the Generalitat was subject to a delimited budget which brought with it legal precision in the scope of credits allocated to cost lines in the budget, and, consequently, the legal impossibility of incurring obligations in an amount above the budgeted figure. In all of them, the incurring of public expenditure incorporated a process, basically regulated by Article 46 of Legislative Decree 3/2002 which approved the Re-Statement of the Law on the Public Finances of Catalonia (DOGC of 31 December 2002) in which there are four phases: a) authorisation of costs through a budgetary credit within the limits of the relevant budget, a phase which corresponds to the initiation of the authorisation process to which Article 116 of Law 9/2017 of 8 November on public sector contracts (LCSP) refers; b) disposal, which corresponds to the award and formalisation of a contract for works, services or supply and by which the reservation of the credit in a specific amount is formalised (Articles 150 and 153 of the current LCSP); c) the obligation or transaction of contracting in accounts the payments capable of being demanded from the Generalitat because, once the delivery of the goods or the provision of services has been successfully carried out, the supply which is the subject of the disposal has been satisfactorily credited (this phase corresponds with the delivery of the thing of the provision of the service referred to in Article 210 of the current LCSP and determines the existence of a debt which is due, liquidated and demandable forming part of the liabilities of the public purse regardless of any vicissitudes, the time at which it arises and the physical nature of the actual payment); and d) finally, the payment order against the Treasury of the Generalitat, it being understood that "payment ordered" means the transaction by which a competent administrative authority issues, in relation to a specific obligation, the payment order against the Public Treasury of the Generalitat (Article 198 of the current LCSP) with payment being made regardless even of the nullity of the order to contract, if in fact the service has been provided or the thing delivered because, if not, the Administration would be unjustly enriched, if the contract order were declared null and void to the prejudice of the supplier.

Authorisation of an expense, its disposal and incurring obligations are actions performable by the senior constituents of each competent Ministry in function of the amount and the budgetary allocation involved (Article 47 of Legislative Decree 3/2002), but the payment order does not fall to the manager of the credit but regardless of which administrative body is interested in performance of the contract, the competent body is always the Counsellor of the Economy and Finance (Article 48 of the Legislative Decree) as "orderer of payment," any general or specific delegation of powers which may be in place notwithstanding.

On 25 July 2017 the Autonomous Government in plenary session resolved to bring a contentious-administrative action against the Resolution of 21 July 2017, applying for its suspension and at the same time, it resolved to confer all

competencies relating to compliance with the Resolution to the Counsellor of each Department, except those specifically relating to the audit function which remained delegated and concentrated in the Auditor General. By virtue of that resolution, the weekly certificates demanded by the Resolution of 21 July 2017 came to be signed by each Counsellor, by the Vice-President and Counsellor of the Economy and Finance, the defendant Oriol Junqueras or by the Auditor General, as the case might be. This was an attempt to insulate the relevant civil servants from any criminal liability that might arise and, at the same time, concentrate responsibility in the members of the Government of Catalonia and the Auditor General. The Counsellors and the Auditor General issued the certificates required up to September. The contentious-administrative action was declared to be discontinued, for loss of its subject, as the resolution in question had been repealed.

In September 2017, the Auditor General of the Generalitat did not send any information to the Ministry of Finance. The Vice-President and Counsellor of the Economy and Finance, the defendant Oriol Junqueras, by letter dated 13 September 2017 addressed to the Minister of Finance and Public Function stated that he was ceasing to accept the obligation to send accounting information and, as the senior person responsible, he was excusing the audit officials concerned from performing the obligation. That is to say, he clearly and plainly stated his intention not to comply with the economic-financial information and certification obligations arising under applicable law and the resolutions of the Cabinet Committee for Economic Affairs to which we have referred. The reasons given in the letter leave no room for doubt: the Parliament of the Autonomous Community had approved the Law on the Self-Determination Referendum, the Government of the Generalitat had called the referendum and the State was trying to control the Autonomous Community in political affairs not relating to budgetary stability, so that the Government of the Generalitat had resolved that "*it absolves itself and excuses the relevant officials from the obligation to send the information required under the Resolution of the Cabinet Committee for Economic Affairs of 21 July.*" In addition, it appears that the judicial resolution of the contentious-administrative action and of the application for suspension weren't taken into account at the moment of resolving not to comply with the obligations imposed by then current law.

In these circumstances, in the face of the grave breach of the principles of Organic Law 2/2002 and non-compliance with the other economic-financial obligations accepted by the Government of the Generalitat, the Cabinet Committee for Economic Affairs by Resolution of 15 September 2017 published under Order HFP/878/2017 dated 15 September (BOE of 16 September 2017), increased the existing monitoring measures at that time already breached and established a payment management mechanism for specific budgetary credits for direct payment to suppliers, creditors of the Generalitat, only against invoices remitted by the Auditor General. In addition to this, it submitted to prior authorisation of the Council of Ministers all transactions under which debts of the Community could arise,

including short-term transactions. Among many other measures, it was provided that all contracting and auditing entities which had oversight of administrative actions aimed at the supply of goods or services to the Autonomous Community of Catalonia and the entities in its public sector, were obliged to issue a "*responsible declaration*" in which they stated that those goods or services had no relation to the financing of illegal activities, issuing the declaration to the provider and to the Ministry of Finance. It was also provided that the Generalitat could not order the carrying out of any payment via services contracted with credit institutions –basically, bank transfers– without an accompanying certificate from the Auditor which allowed it to be confirmed that the payment had no relation to the financing of illegal activities or activities prohibited by the Courts.

As has been stated previously, Decrees 139 and 140/2017 of 6 September had, respectively, declared the calling of the referendum on 1 October and the approval of the rules for its carrying out, and of particular note in that second Decree, which founds the alleged offence of misuse of public funds, its Final Provision, in which it was stated that "*the Government of the Generalitat is authorised to carry out the approval of expenses and administrative actions for the effective holding of the Referendum, including the making available of staff, material and technology of which it may dispose.*"

On 7 September 2017, in implementation of this second Final Provision, the Government of the Generalitat –at the proposal of the defendants Vice-President Oriol Junqueras and Counsellors Jordi Turull of the Presidency and Raúl Romeva for Institutional and Foreign Affairs– passed a specific Resolution which authorised the various departments to carry out the actions and enter into the contracts that might be necessary for the holding of the referendum. The Government of the Generalitat constituted itself an electoral administration and consequently assumed the obligation of facilitating and providing the resources, material and instruments necessary for it to take place, agreeing that the decisions and actions necessary for it to be held on 1 October "*will be taken collectively and collegiately by the members of the Government and responsibility for them assumed jointly.*"

This Resolution, which is attached to the Inquiries of the Guardia Civil No. 2018-101743-034 is telling in relation to the perpetration of and responsibility for the offence of misuse of public funds. One need only read its text –the original, in Catalan– where it is stated that it implements Law 19/2017 on the Referendum, Decree 139/2017 on Calling and Decree 140/2017, Supplementary Provisions, specifically its Second Additional Provision already mentioned.

According to those statutory provisions –first put into abeyance and in due course declared unconstitutional and void by the Constitutional Court– the Government of Catalonia, without complying with judicial pronouncements or recognising their validity, states in its Resolution that they are the basis of the authority of the Government to approve the public expenditure, the necessary administrative actions and the use of public buildings belonging to the Generalitat and to the public sector which might be necessary to the effective holding of the referendum. Consequently, the Government resolves that such contracts be entered into and costs and political and administrative actions be approved as might be necessary for it to be held. Specifically, by way of illustration and without limitation, it authorises itself to carry out:

- The design, printing, stocking and distribution of the necessary electoral material (ballot boxes, ballot papers, envelopes, polling station procedures, operating manual for polling stations, accreditations, credentials...).
- The compiling of the electoral census using all the public registers belonging to the Generalitat of Catalonia, its formal communication and sending, as the case may be, to voters and its printing for use on voting day in accordance with the law relating to the protection of data.
- Communication to Catalans living abroad with the right to vote of the mechanism through which they could exercise their right to vote.
- The preparation of an informative web page and the purchase and reservation of domains and hosting services, as well as the use of existing domains and services.
- Commissioning, contracting and design of institutional communication campaigns, as well as campaigns relating to participants in electoral administration.
- Definition of the constituencies and polling stations and the nomination and formal communication of polling station presiding officers and polling clerks.
- Use of spaces in the ownership or usable by right of the Generalitat of Catalonia and its dependent organisations and entities.
- Creation of a register of people working in electoral administration.
- Use, in general, of the human, material and technological resources necessary to ensure the satisfactory organisation and holding of the

Catalan Self-Determination Referendum and of the resources that it already had use.

In accordance with this shared decision, different departments, with the endorsement without exception of all the members of the Government, incurred a series of expenses to organise the referendum, side-stepping in so doing the controls established to ensure the budgetary stability and financial sustainability of the Autonomous Community of Catalonia.

The Generalitat also brought a contentious-administrative action against the resolution of the Cabinet Committee for Economic Affairs of 15 September 2017 and applied for its suspension which was refused by the Third Chamber of the Supreme Court. That action was also unsuccessful in relation to its basis, it being confirmed in a judgement dated 17 October 2018 made in contentious-administrative proceedings 581/2017 that the system of controls over the public finances of Catalonia by the Ministry of Finance was lawful, making any non-compliance by the Generalitat unjustifiable and validating the receipt of information from the Generalitat by the Ministry of Finance, much of which increased the incriminating evidence in this Special Case, insofar as it relates to the alleged offence of misuse of public funds.

That judgement states that the measure resolved by the Ministry of Finance is independent of the declaration and application of Article 155 of the Constitution, that is to say, it involves the exercise of the administrative competences of the State. It is worth drawing out these extracts from the judgement which are relevant to these criminal proceedings:

"Third Legal Basis: (...) There appears, as the State Attorney brought out, a desire and will of the Government of the Generalitat to spend public money on organising an unconstitutional referendum. This desire requires public resources which are to be gathered from the budgetary allocation in question in these proceedings and declared unconstitutional in the judgement of 5 July 2017. And those public resources are obtained through external financing mechanisms such as the funds given to the Generalitat as a member of the Autonomous Liquidity Fund, funds which, obviously, cannot be used to pursue an unconstitutional end.

(...) 1.5. The petitioner Community is bound by its own actions and by the conditions that it imposed on itself when it accepted finance from one of the instruments of budgetary stability to apply the funds obtained to provide public services of general interest in its territory. It cannot use them to finance processes declared unconstitutional with disruption to the public services for which it is obliged and in non-compliance with the principle of scope of powers to which its financial autonomy is linked.

1.6. The Generalitat adhered voluntarily to the Autonomous Liquidity Fund with all the consequences that follow. It is clear that adherence obliges it to respect the regulatory framework of the Autonomous Liquidity Fund which includes not only laws (Organic Law 2/2012 and Royal Decree-Law 17/2014) but also the provisions for its implementation and the resolutions that may be adopted by the Cabinet Committee for Economic Affairs.

The Generalitat is aware of what it has agreed to and that it cannot unilaterally abrogate it. If it receives funds from the Autonomous Liquidity Fund it has to respect the law governing the spending of the Autonomous Liquidity Fund. The State Attorney underlines that reality ostensibly demonstrates the inability of the Generalitat to finance itself on other markets, or rather its inability to obtain any form of financing given its critical financial situation.

(...) To use public funds to hold a referendum which has been declared unconstitutional constitutes a breach of the law relating to budgetary stability and of the budgetary lawfulness proclaimed in the Constitution, the Autonomy Statute for Catalonia and Laws on Treasury and Finance of Catalonia and calls for a response which aligns the receipt of public funds through the Autonomous Liquidity Fund to legitimate constitutional aims which can be no other than the public services that the Autonomous Community should provide, applying those funds to meet the corresponding expenses.

(...) The disputed Resolution does not respond to the situation described in Article 25 of Organic Law 2/2012 and that provision is not the only basis for constraining the unrestrained behaviour of an Autonomous Community in the management and application of its public funds for budgetary stability within the legal framework and also accepted by agreement by that Autonomous Community, much more so when that scenario is not a particular or bilateral budget of the State and the petitioner Autonomous Community but rather part of a complex obligation of the State towards the European Union (Article 135 of the Constitution), of Catalonia towards the other Autonomous Communities and of all of them towards the State, such that the breach of the financing model impacts the State and the other Autonomous Communities as the disputed Resolution makes clear in a precise and detailed way and may even affect the fulfilment of the obligations of the State to the European Union, remembering that the Law of Budgetary Stability subjects this management obligation to the principle of liability by a person who breaches it."

On 27 October 2017 Royal Decree 944/2017 of 27 October came into force which designated bodies and authorities charged with bringing about compliance with measures directed at the Government and the Administration of the Generalitat of Catalonia and authorised by Resolution of the Senate in Plenary Session of 27 October 2017, under the aegis of Article 155 of the Spanish Constitution. In virtue of the competencies conferred by the Royal Decree, the Cabinet Committee for Economic Affairs passed its Resolution of 21 December 2017, which remained in force until 2 June 2018 under which it adopted new control measures and various decisions. In its Paragraph Seven, it repealed the earlier Resolution of 15 September 2017.

The deeds, acts and legal activities attributed to each and every member of the Government of the Generalitat that we have indicated and which constitute the offence of misuse of public funds are the following:

1. In the logistics of the referendum, the actions of the Centre for Telecommunications and Information Technology (CTTI) was very relevant; the CTTI is a public law body with separate legal personality created by Law 15/1993 of 28 December. The Centre is attached to the Department of the Presidency and was run at the time of the facts by the defendant Jordi Turull

Negre. One of its functions is the coordination, supervision and monitoring of the telecommunications systems and services intended to satisfy the needs of the Administration of the Generalitat in such matters (Articles 1 and 2 of the Law).

To assist in the carrying out of the unlawful consultation, there were created within its business web pages, applications, platforms and computer programs that were used to carry out the illegal referendum of 1 October, giving digital support to the dissemination of information, registrations, advertising, vote counting and steps specific to the referendum, control of which was ultimately and effectively exercised by Counsellor Turull.

Many of those pages were duplicated, with some being opened as the Security Forces and Bodies of the State closed others down and we can pick out the following among others:

- The web page referendum.cat, which was opened on 6 September 2017 and immediately after the calling of the referendum by Decree 139/2017 (and the domain referendum.eu).
- Within the domain referendum.cat, there was created the application called Cridas (in Spanish, calls) whose web address was <https://connectat.voluntariat.gencat.cat/crida/66>. The application was used to enlist up to 47,498 volunteers to do the tasks essential to the holding of the referendum in relation to the setting-up of the 2,706 polling stations.
- Also within the domain referendum.cat, there were various live links relating to the referendum, such as a page devoted to describing how to exercise your right to vote or another oriented to the registration of Catalans abroad (registrecatalans.exteriorsgencat.cat) since registration was a prerequisite of the exercise of their right to vote.

As of today, the amount of public funds devoted to this activity is not known, but it is clear that none of these actions could be free, since they imply a series of things that have to be contracted for with third parties, like reserving the domain name, hosting on servers with the capacity to support the probably very heavy traffic, web design, creation of apps as needs be, maintenance of the stability of the system, etc., and must have involved the spending of public money in the case of those actions that can only be carried out by private entities, not part of the Centre –such as the registration of names– or at the least the improper allocation of public resources to these unlawful activities in the case of those that could be carried out by the staff of that public body.

2. For the organisation of the premises in which voting was to take place, Carles Puigdemont –in default through non-appearance– and the defendant Oriol Junqueras, in the posts of President and Vice-President of the Generalitat, sent a letter on 6 September 2017 to all mayors in Catalonia in which they sought to requisition all the voting centres normally used in electoral processes.

That task was also undertaken by others who are in default, Antoni Comín Oliveres, Health Counsellor, and Marta Rovira, General Secretary of ERC, who carried out management activity in the search for premises into which to install the polling stations.

Given that many of the polling stations were located in Primary Health Care Centres (CAP) or other health premises, on 22 September 2017 the Health Counsellor Antoni Comín, in order to ensure that the making available of these polling stations was exclusively a matter for him to decide without anyone being able to object, resolved to remove from office the representatives of the Government on the 29 health consortia and public health bodies of Catalonia, appointing himself president and director of all the governing bodies, as he already was in relation to the Barcelona Health Consortium. In addition, he announced that the removal from office would be reversed straight after 1 October.

Similarly, on 29 September 2017 the Counsellor of Education Clara Ponsatí –also in default– and the Counsellor of Work and Social Affairs, the defendant Dolors Bassa, with the aim of ensuring the availability of polling stations which had been committed to the holding of the referendum, followed the course that the Health Counsellor had taken on 22 September, such that they took over powers of management and decision-making over schools and community centres, respectively, which were under their respective Departments.

In this way, the premises and public centres were allocated, by collegiate and joint decision of all the members of the Government, to the fulfilment of a purpose which had been declared unlawful in numerous judgements of the Constitutional Court and the judicial actions of the High Court of Justice of Catalonia. The High Court of Justice of Catalonia resolved by Order dated 27 September 2017 that the referendum on 1 October was unlawful, prohibited the holding of the referendum and ordered the Security Forces and Bodies (Mossos d'Esquadra, Guardia Civil and National Police Force) to confiscate the material, close the schools and prevent the vote.

The premises were occupied by the people in advance of 1 October, to prevent their closure, which the Security Forces and Bodies had been ordered to effect by judicial authority and were in the event used as voting places or polling stations on that day.

The amount of money that the use of more than 2,259 premises as polling stations for a day entailed has been assessed by expert testimony at **€900,000**.

3. Institutional publicity relating to the referendum. With a view to publicising the illegal referendum and to increasing participation in it, there were a number of campaigns and actions launched from the Department of the Presidency under the direction of Jordi Turull and financed with public money, as follows:
 - a) *The International Campaign for the referendum*.- The Department of the Presidency awarded to HAVAS MEDIA GROUP the work order PR 006/2017 which included a contract for the promotional insertion of a speech on the Catalan referendum in various international media. The total value of the contract awarded was €127,810.57 (including VAT). The contractual obligations in relation to meeting the costs of this campaign were recognised in the Electronic Contract Work Order Management System on 14th and 21st February 2017 and paid to HAVAS MEDIA GROUP by transfer on 31st May 2017 in an amount of **€110,263.51** drawn against budgetary allocation DD04 D/2260003000/1210/0000. In the certificates issued by the Auditor General and sent to the Ministry of Finance in fulfilment of the budgetary obligations introduced in June and July 2017, there was no mention of the nature and illegality of this payment.
 - b) *The "Registration of Residents Abroad" campaign* was carried on by the Department of the Presidency between February and May 2017 through advertisements encouraging registration to vote on which appeared the question "Yes or No?" on a map of Catalonia. The contracts associated with this campaign were entered into with:
 - ESTUDI DADA SL (Work Order PR-2017-130) which submitted an invoice for **€10,829** for the creation of the advertisement.
 - UTE NOTHINGAD and KARDUMENT (Work Order PR-2016/432), which issued an invoice for **€97,332.63** for distributing the advertisement on the Internet.

- FOCUS MEDIA S.L. (Work Order PR-2016/426 which relates to a framework contract of a much higher value), issued an invoice for placement of advertising for **€158,344.41**.

The services provided to which those invoices refer were fully certified and the obligation to pay them recognised inasmuch as they were certified "approved" by the Autonomous Administration, although they remain unpaid at least partially by virtue of the existence of previous Proceedings 118/2017 of the Examining Court No. 13 of Barcelona. The three businesses claim payment, and since the services described in the invoices were satisfactorily delivered, the Generalitat must pay them.

- Teresa Guix Requejo, a freelance who regularly works for the Generalitat, charged for various jobs including specifically the sum of **€2,700** for the design of the website pactepelreferendum.cat which was necessary for voter inclusion in the register.

For this item a total of €2,700 was paid. Commitments were made to incur costs of €10,829 + €97,332.63 + €158,334.41 = €266,496.04. The public purse was harmed to the extent of €269,496.04.

- c) *The CIVISME campaign*, also run from the Department of the Presidency towards the end of August 2017 to strengthen civic engagement, promote democratic values, social well-being and a culture of peace and solidarity was focused around the advertisement known as "Train Tracks", which showed train tracks splitting at a fork.

The contract for the dissemination of this advertisement was processed under Work Order PR-2017-1992 through a process of award derived from the Framework Agreement for management and advertising placement services. It was successively awarded to the CARAT and then the FOCUS businesses which both resigned when they notice that the work was for an illegal referendum under the fantastical cover of the formal aim of the civic campaign.

Under direction from Turull, the Department of the Presidency then handed the campaign to the Catalan Corporation for Audiovisual Media (CCMA), a public body under the Generalitat, financed in 2017 with a grant of €371 million, against a budgetary allocation approved by the Autonomous Parliament. The purpose of the CCMA is the production and dissemination of audio-visual products to promote standardisation in Catalonia in terms of language and culture. The commission was made through Jaume Mestre Anguera, in charge of Institutional Publicity in the Department of the Presidency. The management of the CCMA understood the campaign to be political and non-institutional and

consequently subject to payment by the Generalitat –as would be the case with any other advertiser– as not included in the institutional public service obligations financed directly by the previously mentioned grant.

CCMA disseminated the advertisements through TV channels, radio, and digital media managed by it, issuing two invoices to the Department of the Presidency, dated 14 September and 5 October 2017, for the respective amounts of **€93,179.56** and **€184,624.85**. The corresponding cost was accepted as an obligation and both invoices were included on the platform for "Immediate provision of VAT information" of the Ministry of Finance on 18 September and 6 October 2017 respectively. They have not been paid and CCMA has sought to recover payment without issuing proceedings by making a formal complaint and it intends to seek recovery –according to the statements in the pre-trial phase from its highest official– through legal means if payment is not made. In any event, the Public Purse suffered a detriment from the cost contracted for the dissemination of the campaign or from its cost, born by CCMA, which issued these advertisements in the place of others that would have produced corresponding receipts.

4. Costs pertaining to the provision of ballot papers, the electoral census, and to the convocation of those staffing the polling stations, carried out by UNIPOST, S.A., in an amount of **€979,661.96** were divided so as to hide them among five Departments (those directed by the defendants Oriol Junqueras –Vice-President–, Jordi Turull –Presidency–, Dolors Bassa –Work–; and the Counsellors in default through non-appearance, Comín –Health– and Puig –Culture–). Of this material, 1,811 registered Special Delivery letters were seized on 19 September by the Guardia Civil in the offices of UNIPOST in Manresa, and the next day 43,429 envelopes containing electoral documentation were seized in its offices in Tarrasa, which consequently were not sent out as originally contemplated. Those invoices are not shown as paid since the Generalitat refused to pay on presentation of demand for payment, but the cost had already been contracted for.

On 7 September 2017, UNIPOST issued to the Departments of the Generalitat mentioned above five invoices, which are:

- Invoice 90659346 P for €196,696.98 excluding VAT to the Department of Culture.

- Invoice 90659348 P for €193,889.98 excluding VAT to the Department of the Vice-Presidency, Economy and Finance.
- Invoice 90659349 P for €192,711.20 excluding VAT to the Department of Health.
- Invoice 90659350 P for €197,492.04 excluding VAT to the Department of Work.
- Invoice 90659351 P for €198,871.76 excluding VAT to the Department of the Presidency.

In total **€979,661.96** invoiced exactly to these departments on dates very close to the seizure of electoral material by the Guardia Civil, which gives rise to the presumption that the invoices were in respect of the work commissioned in relation to preparation for the illegal referendum.

The management of UNIPOST subsequently cancelled the invoices listed above. But, following the reasoning set out above, this does not mean that its credit against the Generalitat does not exist or has been cancelled, since UNIPOST did take steps to undertake the work which was not able to be completed for reasons outside its control, as a consequence of the search and seizure carried out by the Guardia Civil. That is, the credit of the business against the Public Purse exists independently of the fate of the invoices as commercial documents and their satisfaction and payment.

UNIPOST is in insolvency and the matters set out come from the report of the insolvency administrator Mrs Elena Folgueras Sans, an employee of the company JAUSAS LEGAL Y TRIBUTARIO, S.L.P., submitted to the Examining Court No. 13 of Barcelona and which is attached to this document as DOCUMENT No. 1. In the report the listed invoices are shown as having been cancelled, despite which the fact is that after their cancellation steps were taken to obtain payment of some of them. The subsequent attempt to make recovery is shown in the Inquiries 2018-101743-023 of the Judicial Police Unit of the 7th Command of the Guardia Civil.

5. For printed matter for the referendum, although it pretended that the request came from Omnium Cultural, the Department of the Presidency commissioned 3 companies to make posters: ARTIPLAN, MARC MARTI AND GLOBAL SOLUTIONS.

On 15 September 2017 the Organic Unit of Judicial Police of the Guardia Civil of Barcelona confiscated at the company MARC MARTÍ, located at calle Pillars No. 110 and calle Pujades No. 94 in Barcelona, 87,516 posters to advertise the referendum in various sizes.

On 16 September, the same Unit seized from the facilities of the company ZUKOY 5 SL located in calle Alarcón No. 42, Sant Adrià de Besos (Barcelona) a number of plates for the printing of posters relating to the referendum.

On the same date, the same Unit seized 113,000 leaflets for the referendum in the headquarters of the company ENCUADERNACIONES ROVIRA SL, located at calle Bernat Metge No. 92, Sabadell (Barcelona).

Also on the same date, 507,000 leaflets and 750,000 pamphlets for the referendum were seized at the company BUZONEO DIRECTO SL, located at calle Poblet No. 85, Moncada i Reixach (Barcelona).

On 24 September 2017, the same police Unit seized 400,000 DIN A5 leaflets, 15,000 DIN A3 pamphlets, 11,000 DIN A4 pamphlets and 30,000 posters all relating to the referendum from the company DISNETS SISTEMAS DE DISTRIBUCIÓN S.A., located at calle Can Camps No. 15 on the Can Roquet Industrial Estate in Sabadell.

For the time being, the amount of money from public funds used for this activity is not known, although it is clear that, the work having been undertaken, a debt payable from the public purse has been created, which is capable of being determined subsequently, as will be described in the paragraph relating to civil liability arising from the offence.

6. International activity undertaken by the Generalitat in favour of the seditious process.

From as early as 2015, the Government of the Generalitat used budgets, general policies and specific actions to confer on itself international projection. Consistent with the strategy followed, garnering support in sectors of public opinion in other countries and the internationalisation of the conflict with Spain would take on enormous significance for the purpose of forcing international mediation and the support of the European Union.

In February 2016 there was created to that end, within the structure of the Government of the Generalitat, the Department of Foreign Affairs, Institutional Relations and Transparency, a name which was subject to challenge by the Government of the Country and which, following the STC (Judgement of the Constitutional Court) of 21 June 2016, came to be called the Department of Foreign and Institutional Relations Affairs and Transparency, directed by the defendant Raúl Romeva. In 2017 its budget was increased by decision of the Parliament of Catalonia by 107%, with the amount allocated to Foreign Affairs rising to a total of €35 million within the

total €64 million budget of the whole Department (in the budgets for 2015, the most recent, total public funds allocated to Foreign Affairs was half the revised figure, €17 million). The Budgets were published by Law 4/2017 on 28 March (DOGC of 30 March). Under the direction of the cited defendant, the Department undertook, amongst others, the following actions intended to promote the referendum internationally:

a) Offices of the Government of the Generalitat abroad.

As long ago as 2016, the Autonomous Government announced that by the end of 2017 its Offices would increase from 5 to 17, and indeed Offices were opened in various European countries, in the European Union and in the United States, with plans to expand the Offices to Lisbon, Rome, Copenhagen, Warsaw, Geneva, Zagreb, Rabat, Seoul, Buenos Aires and Mexico City. The defendant Raúl Romeva defended the increase in the budgetary allocation for the opening of new Offices abroad from €3 million to €6.5 million in 2017 in the Catalan Parliament on the basis of "*preparing the constitutive process for the Catalan Republic*" (a report can be seen, for example, at <https://www.elmundo.es/cataluna/2017/01/17/587e4a3122601dad1a8b45f0.html>). Consistently with this aim, of the €35 million allocated, €23 million relate to operating and staff costs and €12 million were intended for specific initiatives which included most notably the activity of the Catalan Presidency abroad which consumed €2.3 million. In addition, actions were taken to facilitate voting by Catalans living abroad (Paragraph 3) along with diplomatic or lobbying activity intended to generate an international image favourable to the process described in this document, which continued to be undertaken even after the Constitutional Court in its Judgement of 5 July 2017 forbade the use of any budgetary allocation for such ends. Thus, the Representative of the Autonomous Government to the European Union announced on 21 September an event organised in the Committee of the Regions by the group "Alianza europea," a speech on the repression supposedly suffered by Catalonia, placing Spain outside the bounds of European democracy, and appealing to the European Union to mediate.

b) The Generalitat's international public relations campaign.

The Council for Public Diplomacy of Catalonia (Diplocat), regulated by Decree 149/2012, is according to Article 1 of its Statutes "*a consortium entity, with separate legal personality, subject to Public Law,*" among whose aims is "*to support the strategy for public diplomacy of the Government of Catalonia*" (Article 2).

Under the appearance of a public-private consortium, Diplocat is tightly linked in its operation to the Generalitat which owns more than 90% of it, approves and modifies by Decree its budgets, has the same number of votes as the other Voting Members and is able to resolve by its own initiative to dissolve the consortium (Article 27). In addition, its President, who is the President of the Generalitat, has a casting vote (Article 13).

From a budgetary point of view, Law 4/2017 of 28 March on the budgets of the Generalitat of Catalonia for 2017 distinguished between majority-owned consortia, whose budgets form part of the budget of the Generalitat (Article 1.f), and the others with less than majority ownership, whose budgets are incorporated into the budget of the Generalitat (Article 1.2). Article 2.7 of that Law lists those consortia whose budgets are integrated into the general budgets of the Autonomous Community and among them, listed third, is Diplocat, despite the fact that this body has an estimatory budgetary regime.

From an economic and financial point of view, Diplocat is classified as part of the public sector of the Autonomous Community of Catalonia as an "Autonomous Public Administration" for purposes of the European System of Accounts 2010, as can be seen in the Inventory of bodies of Autonomous Communities, and the Generalitat is responsible for all premises and service costs necessary to its operation, including those relating to staff and operation (Article 24 of the Statutes). Financial control of Diplocat is maintained through auditing under the direction of the Auditor General of the Generalitat of Catalonia, in accordance with the legal regime for the regulation of the public finances.

In this context, Diplocat acted as a sort of diplomatic corps in parallel to that of the state and as a privileged lobbying group, and disseminates the self-rule message and objectives in a number of countries. In the first few months of 2017, there were two international gatherings on the subject and there was a programme of international visitors and observers in support of those objectives. This work was carried on in third countries through contracts with local bodies.

Specifically, the Office of the Generalitat of Catalonia in the USA, in the name and on behalf of the Generalitat, signed a contract on 15 August 2017 with the consultants "SGR Government Relations and Lobbying," registered in the US Justice Department's FARA register, under which in exchange for an advance payment of **€60,000** for three months extendible, the company undertook to facilitate meetings with media

outlets, business groups, organisations and officials of legislative and executive bodies for the undertaking of "*political activities*" of dissemination. Among other things, the FARA register shows the making available apparently to journalists of the press release issued by the President of the Generalitat following the events of 20 September, pointing them in the direction of the line of information created in relation to them by The Washington Post newspaper. Together with letters supporting the referendum, other documents show that the lobbyist worked for the Generalitat and offered to put senior Catalan officials in contact with interested parties. The then President of the Generalitat – who today is in default by reason of non-appearance in this Special Case– appeared in various North American media outlets and on 22 September 2017 published an article in The Washington Post headed "Sorry, Spain. Catalonia is voting on independence whether you like it or not." He went on to be interviewed by the New York Times on 28 September.

These actions were embarked on to gather the support of more or less well-known figures on the international scene, and to keep up protest in the face of judicial closure of the web pages of the referendum and other judicial actions. OC, following the same line, created the web page www.letcatalansvote.org/es

c) International web pages.

Judicial closure of the first web pages created to inform electors of the manner of and place for voting was side-stepped, with clear disregard of the orders of the Judge of Examining Court No. 13 and the Judge of the High Court of Justice of Catalonia by the cloning of the pages and the distribution of the information from different domains. The members of the Government themselves –now charged– gave out this information from the official web pages of their respective Departments and through their social media in the days leading up to the referendum.

To obstruct judicial intervention, some of these cloned web pages were hosted on national domains or servers in third countries, where the law relating to the hosting of content on websites is lax and which do not extend international cooperation to other States to close down these pages or who put up many obstacles, from whatever authority the request may originate. Among the domains identified: referendum.ws, hosted by Global Domains International Inc. under the national authority of Western Samoa, Polynesia; referendum.cat, ref1oct.cat, ref1oct.eu and

referendum.ws, hosted by Google, Inc.; and [@ref1oct](https://twitter.com/ref1oct), hosted by Twitter, Inc., all of them on US servers, and the domain ref1oct.eu hosted by Eurid VZW, located in Belgium. In total some 140 web pages have been identified, some hosted in various countries in Asia and Oceania as well as Russia.

Both the offices of the Catalan Government abroad and Diplocat, under the direction of defendant Romeva, had enormous importance for the event of 1 October. The overseas offices managed voting by Catalans living outside Catalonia in two stages: a first electronic stage and a second stage in which voters were required to register on the register of overseas Catalans, which automatically sent a link for entry of their personal details, which in turn gave them access to a website for download of a ballot paper. Once the ballot paper had been printed and filled in, it had to be sent to the relevant Overseas Office which kept the votes pending counting in the Office itself on 1 October. This system led the High Court of Justice of Catalonia to order the blocking of Amazon Cloud Services where the overseas vote was being operated to prevent its use, despite which a large proportion of the votes were cast. The final result issued by the Generalitat includes 4252 votes in favour cast abroad, 55 against independence and 23 invalid votes.

The legal framework for this system was set out in cited Decree 140/2017, signed by the whole Government of the Generalitat, each of them accused of misuse of public funds insofar as those who have not fled Justice are concerned.

- d) Entering into contracts with and payment to international experts and observers.

The presence of experts and observers on 1 October was provided for in Decree 140/2017 in great detail.

Diplocat, under the direction of the defendant Raúl Romeva as Counsellor in the Department for Institutional Relations and Foreign Affairs, contracted with a series of individuals whose mission was to analyse the political situation in Catalonia between 4 September and 8 October from the perspective of the secessionist project and the need for the referendum.

To that end, he invited 30 legislators and Members of the European Parliament, including one pertaining EH-Bildu, from Belgium, Denmark, Estonia, Finland, Germany, Greece, Iceland, Ireland, Latvia, Macedonia, Monaco, Slovenia, Switzerland and the United Kingdom. Diplocat organised meetings between them and the President of the Generalitat, the President of the Parliament and the Counsellor already mentioned, but not with the range of opponents to the referendum. Diplocat also arranged for them to be transported to polling centres on 1 October.

Contracts were also entered into with international observers. Under the leadership of the New Zealander Helena Catt, the appointed observers were John Ault, Samuel Cunningham, Lloyd Dalziel, Terry Duffy, Anne Serafini Grandvoinet, Michael Grange, Steffan Caradog John, and Kimberli Kippen, supported by Alex Ollington, Ashley Griffiths, Thomas Fidler and Tobías Byfield. All of them travelled to Catalonia in this period and occasionally from June on. Each of them entered into an individual contract with Diplocat for payment of their fees and expenses. Within their expenses, Diplocat agreed to pay their costs of travel, accommodation and office rental as part of the work was undertaken in Barcelona. These costs were paid by Diplocat against its budgetary allocation and amounted in respect of fees to a total of **€114,592.50** and in respect of accommodation, travel and other costs to a total of **€62,712**.

These amounts can be found from various invoices issued between July and November 2017 which were paid between July 2017 and January 2018. The Office of the Generalitat in Brussels made a payment with a Diners Club card, in the name of Patronat Catalunya-Mon (the name of Diplocat's predecessor "*Patronato de Catalunya-Mundo*" and earlier "*Patronato Catalán Pro Europa*" and which can be seen to have entered on the Public Contracting Platform of the Generalitat at https://contractaciopublica.gencat.cat/ecofin_pscp/AppJava/es_ES/cap.pscp?reqCode=viewDetail&idCap=373846), in an amount of **€40,591**, with a further **€2.750** outstanding. Albert Royo Marine, Diplocat's representative, signed an accountable officer declaration in relation to these costs indicating that they had not been for any illegal action or contrary to any decision of the Courts.

Further, Diplocat and MN2S MANAGEMENT LIMITED (a British company whose main business according to its website <https://mn2s.com> is representing live actors and performers, DJs and celebrities) agreed on 5 September 2017 with Mr Wim Kok –Willem "Wim" Kok is a Dutch politician who served as President of his country– the presence on 1 October of a

group of observers and experts whose fees, flights and accommodation amounted to **€54,030**, paid by Diplocat to the company MN2S, although the company subsequently returned that amount once it had realised that what had happened was illegal.

The fraud on the Public Purse by the assumption by the senior members of the Government of the Generalitat of financial obligations, whether or not payment was made, is **€60,000 + €114,592.50 + €62,712 + €40,591 + €2,750 = €280,645.50**. To this in any event there should be added the sum of **€54,030**, apparently returned by the business MNS2, because the money was returned for reasons outside the control of the offender after, payment with public money having been made, the offence of misuse of public funds had already been committed. Without prejudice to whatever may be determined in relation to civil liability arising from the offence of misuse of public funds so far as its determination by the Court of Auditors is concerned, we would now have a total figure of **€334,675.50**. The value of the contract signed with SGR MANAGEMENT LLC has also been included because although it was signed on 15 August 2017, several months before the calling of the referendum, some of the actions taken in its implementation (such as The Washington Post article) took place on 22 September 2017, on account of which we consider that the contract is directly linked to the promotion of the illegal consultation. Were that not to be found to be the case, we would give an estimated figure of **€274,675.50**.

Second.- Legal assessment of the facts.

The facts described are constitutive:

1.- of the offence of **sedition**, contemplated by Articles 544 and 545 of the Criminal Code.

2.- of the offence of **misuse of public funds** under Article 432, Paragraphs 1 and 3 of the Criminal Code.

The offences are **concurrent** taking into account the single criminal intent, that is to say, the identity of the aim pursued; the logical, temporal and spatial connection of the two criminal courses in this specific instance; and the joint role of both of them in a single course of criminal conduct, all of which are criteria laid down by the Supreme Court as determining factors for the existence of concurrent offences (Judgements of the Supreme Court No. 1632/2002 of 9 October, No. 504/2003 of 2 April; No. 336/2014 of 11 April; and No. 863/2015, of 30 December, among others).

3.- of an ongoing offence of **grave disobedience** committed by a public authority under Article 410.1 in relation to Article 74 of the Criminal Code.

Third.- The involvement of the accused.

1.- The following of the accused are liable for the **offence of sedition**, as primary offenders:

a) These caused, sustained and directed sedition in their capacities as members of the Government: Oriol Junqueras Vies (Vice-President of the Autonomous Government and Counsellor of the Economy and Finance of the Generalitat), Joaquim Forn Chiariello (Counsellor of the Department of Home Affairs), Jordi Turull Negre (Counsellor of the Department of Presidency), Raül Romeva Rueda (Counsellor of the Department of Foreign Affairs, Institutional Relations and Transparency), Josep Rull Andreu (Counsellor of the Department of Territory and Sustainability), and Dolors Bassa Coll (Counsellor of the Department of Work, Social Affairs and the Family). All of them have the capacity as discharge authority for the purposes of Article 545.1 of the Criminal Code.

b) These caused, sustained and directed sedition in their capacities as managers of civil associations: Jordi Sánchez Picanyol (President of the Asamblea Nacional Catalana) and Jordi Cuixart Navarro (President of Omnium Cultural). None of them have the capacity as discharge authority for the purposes of Article 545.1 of the Criminal Code.

c) She caused, sustained and directed sedition in her capacity as President of the Parliament of Catalonia: Carme Forcadell Lluís. She has the capacity as discharge authority for the purposes of Article 545.1 of the Criminal Code.

2.- The following of the accused are liable for the **offence of misuse of public funds**, as primary offenders those members of the Government of the Generalitat who passed the resolutions for the execution and holding of the referendum of 1 October, illegitimately using public funds: Oriol Junqueras Vies, Joaquim Forn Chiariello, Jordi Turull Negre, Raül Romeva Rueda, Josep Rull Andreu, Dolors Bassa Coll, Meritxell Borrás Solé, Carles Mundó Blanch and Santiago Vila Vicente.

3.- The following of the defendants are liable for an ongoing offence of **grave disobedience** committed by a public authority: Meritxell Borrás Solé (Counsellor of the Department of Governance, Public Administration and Housing), Carles Mundó Blanch (Counsellor of the Department of Justice), Santiago Vila Vicente (Counsellor of the Department of Business and Knowledge), Lluís María Corominas Díaz

(Member of the Autonomous Parliament, First Vice-President of the Bureau up to July 2017 and President of the Parliamentary Group Junts pel Sí), Lluís Guinó Subirós (Member of the Autonomous Parliament and First Vice-President of the Bureau), Anna Simó Castelló (Member of the Autonomous Parliament and First Secretary of the Bureau), Ramona Barrufet Santacana (Member of the Autonomous Parliament and Fourth Secretary of the Bureau), Joan Josep Nuet Pujals (Member of the Autonomous Parliament and Third Secretary of the Bureau), and Mireia Boya Busquets (President of the Parliamentary Group CUP).

Fourth.- Mitigating, aggravating and exonerating circumstances.

There are no circumstances which modify criminal liability.

Fifth.- Punishments.

The following punishments fall to imposed on each of the accused:

- a) Oriol Junqueras Vies, 12 years of imprisonment and the same period of absolute disqualification for offences 1 and 2 above.
- b) Joaquim Forn Chiariello, 11 years and 6 months of imprisonment and the same period of absolute disqualification for offences 1 and 2 above.
- c) Jordi Turull Negre, 11 years and 6 months of imprisonment and the same period of absolute disqualification for offences 1 and 2 above.
- d) Raül Romeva Rueda, 11 years and 6 months of imprisonment and the same period of absolute disqualification for offences 1 and 2 above.
- e) Josep Rull Andreu, 11 years and 6 months of imprisonment and the same period of absolute disqualification for offences 1 and 2 above.
- f) Dolors Bassa Coll, 11 years and 6 months of imprisonment and the same period of absolute disqualification for offences 1 and 2 above.
- g) Meritxell Borrás Solé, 7 years of imprisonment and 10 years of absolute disqualification for offence 2 above and a fine of 10 months (with a daily rate of €100) and special disqualification from public employment or occupation of a public position for one year and eight months for offence 3 above (specifically from the exercise of elective public office and government and/or administrative functions whether local, provincial, autonomous, national or supranational).
- h) Carles Mundó Blanch, 7 years of imprisonment and 10 years of absolute disqualification for offence 2 above and a fine of 10 months (with a daily rate of €100) and special disqualification from public employment or occupation of a public position for one year and eight months for offence

3 above (specifically from the exercise of elective public office and government and/or administrative functions whether local, provincial, autonomous, national or supranational).

- i) Santiago Vila Vicente, 7 years of imprisonment and 10 years of absolute disqualification for offence 2 above and a fine of 10 months (with a daily rate of €100) and special disqualification from public employment or occupation of a public position for one year and eight months for offence 3 above (specifically from the exercise of elective public office and government and/or administrative functions whether local, provincial, autonomous, national or supranational).

- j) Jordi Sánchez Picanyol, 8 years of imprisonment and the same period of absolute disqualification for offence 1 above.

- k) Jordi Cuixart Navarro, 8 years of imprisonment and the same period of absolute disqualification for offence 1 above.

- l) Carme Forcadell Lluís, 10 years of imprisonment and the same period of absolute disqualification for offence 1 above.

- m) Lluís María Corominas Díaz, a fine of 10 months (with a daily rate of €100) and special disqualification from public employment or occupation of a public position for one year and eight months for offence 3 above (specifically from the exercise of elective public office and government and/or administrative functions whether local, provincial, autonomous, national or supranational).

- n) Lluís Guinó Subirós, a fine of 10 months (with a daily rate of €100) and special disqualification from public employment or occupation of a public position for one year and eight months for offence 3 above (specifically from the exercise of elective public office and government and/or administrative functions whether local, provincial, autonomous, national or supranational).

- o) Anna Simó Castelló, a fine of 10 months (with a daily rate of €100) and special disqualification from public employment or occupation of a public position for one year and eight months for offence 3 above (specifically from the exercise of elective public office and government and/or administrative functions whether local, provincial, autonomous, national or supranational).

- p) Ramona Barrufet Santacana, a fine of 10 months (with a daily rate of

€100) and special disqualification from public employment or occupation of a public position for one year and eight months for offence 3 above (specifically from the exercise of elective public office and government and/or administrative functions whether local, provincial, autonomous, national or supranational).

- q) Joan Josep Nuet Pujals, a fine of 8 months (with a daily rate of €100) and special disqualification from public employment or occupation of a public position for one year and four months for offence 3 above (specifically from the exercise of elective public office and government and/or administrative functions whether local, provincial, autonomous, national or supranational).
- r) Mireia Boya Busquets, a fine of 8 months (with a daily rate of €100) and special disqualification from public employment or occupation of a public position for one year and four months for offence 3 above (specifically from the exercise of elective public office and government and/or administrative functions whether local, provincial, autonomous, national or supranational).

Sixth.- Civil liability and costs.

No action to establish civil liability is taken, without prejudice to the sending of the details and of the judgement of the Court to the Court of Auditors in accordance with Article 18.2 of Organic Law 2/1982 of 12 May on the Court of Auditors, and with Article 20 (on the Legal Service of the State in the Court of Auditors) and 49.3 of the Law on the Functioning of the Court of Auditors, Law 7/1988 of 5 April for the definitive amount diverted to be established and claimed.

The fixing of the amount defrauded for criminal purposes is only relevant for the determination of whether the offence of misuse of public funds is aggravated.

The amount which arises from this indictment is €1,971,601.42, which is the sum of the following amounts: 110,263.51
+ 269,196.04 + 93,179.56 + 184,624.85 + 979,661.96 + 334,675.50.

The Court is asked to pronounce expressly on these costs, including those subject to private accusation, represented by the Office of the State's Attorney.

On account of and in virtue of everything said,

I ENTREAT THE SECOND CHAMBER OF THE SUPREME COURT
that taking as submitted this document and the copy documents that

accompany it, the Second Chamber be pleased to admit it, and in virtue of it, take as formulated **an Indictment for offences of sedition, misuse of public funds and grave disobedience committed by a public authority**, and make cause this Special Case to take the appropriate course.



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Barcelona, 16th Novembre 2018



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