



JUSTICE ADMINISTRATION

SUPREME COURT

Criminal Court

Ruling no./

Date of Ruling: 21/03/2018

Type of Procedure: SPECIAL CASE

Procedure Number: 20907/2017

Decision/Agreement Free-text ruling

Investigating Judge His Excellency Mr Pablo Llarena Conde

Origin: Public Prosecutor's Office

Attorney in the Administration of Justice The Honourable Ms María Antonia Cao Barredo

Transcribed by: SOP

Note:

Summary:

Committal for trial



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SPECIAL CASE no.: 20907/2017

Investigating Judge: His Excellency Mr Pablo Llarena Conde

Attorney in the Administration of Justice The Honourable Ms María Antonia Cao Barredo

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His Excellency Investigating Judge

Mr Pablo Llarena Conde

In Madrid, on 21 March 2018.

The Investigating Judge being his Excellency Mr Pablo Llarena Conde

FACTUAL BACKGROUND

ONE.- The investigations undertaken up until today's date reflect the following facts:

Initiation of the independence process:

1. On 19 December, 2012, Artur Mas Gavarró, at the time candidate for the presidency of the Generalidad de Cataluña and leader of the political party Convergència i Unió (Convergence and Union – CIU), together with Oriol Junqueras i Vies, president of the political party Esquerra Republicana de Catalunya (Republican Left of Catalonia – ERC), signed the “Acuerdo para la Transición Nacional y para Garantizar la Estabilidad del Govern de Catalunya” (“Agreement for National Transition and the Stability of the Government of Catalonia”), a document of 19 pages in which they agreed the main lines of a pact for what



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was to be the 10th legislative term, including an agreement for a consultation on independence to be held in 2014¹.

The agreement between the two pro-sovereignty political bodies provided for the appointment of Artur Mas, who enjoyed the parliamentary support of his own party, CIU and that of ERC, as president of the Generalidad de Cataluña.

2. At a later date, and as a direct consequence of the agreement between the two political bodies, the Parliament of Catalonia, in Resolution 5/X of 23 January 2013, approved a declaration of sovereignty and of the right to decide of the people of Catalonia. In this resolution it was established that "In accordance with the will of the majority expressed democratically by the people of Catalonia, the Parliament of Catalonia agrees to initiate the process required in order to exercise the right of the citizens of Catalonia to decide on their political and collective future", adding that "the people of Catalonia possess, by virtue of democratic legitimacy, the character of a sovereign political and legal subject"².

3. This resolution of the Parliament having been challenged by the Government of the Nation, the Constitutional Court declared in its decision 42/2014 of 25 March³ that "the recognition that the people of Catalonia possess the quality of sovereignty, a recognition not foreseen in our Constitution for the nationalities and regions that make up the State, is incompatible with Article 2 of the Spanish Constitution, as it implicitly confers onto a partial subject, to which said quality is predicated, the power to break by its sole will a principle that the Constitution declares itself to be founded upon in the above-cited constitutional provision, namely: "la indisoluble unidad de la Nación española" (the indissoluble unity of the Spanish nation). On these grounds, the Court concluded by declaring unconstitutional and void the proclamation that the people of Catalonia possessed the character of a sovereign political and legal subject.

The Decision also declared that the alleged "right to decide of the citizens of Catalonia" referred to in the resolution, could not be interpreted as a declaration of any right to self-determination not recognised in the Constitution, or as an attribution of sovereignty not

¹ The document appears in Appendix I, from Statement 2018-101743-6.

² <https://www.parlament.cat/document/intrade/7217>



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recognised in it, but as a political aspiration that may only be arrived at through a process in keeping with constitutional law (Legal Principle 3)

4. Three weeks after the approval of Resolution 5/X, i.e. on the 12 February 2013, Decree 113/2013 of the Department of the Presidency of the Generalidad de Cataluña was also approved, by which an office of the ⁴ Advisory Committee for the National Transition was created, which, according to Article 2 of the Decree, had the function of: a) analysing and identifying all the legal options available in relation to the national transition process; b) advising the Government on the identification of strategic structures for the future functioning of the Government and of the institutions of Catalonia, and optimising the available resources; c) proposing actions and promoting diffusion of the process of national transition in the international community and identifying sources of support; and d) advising the Government on deploying institutional relations in Catalonia with the object of guaranteeing the process as a whole.

5. Between July 2013 and July 2014 (after the aforementioned Decision 42/2014 of the Constitutional Court had been published on 25 March), the Advisory Committee on National Transition submitted 18 reports to the Generalidad de Cataluña, which were consolidated in the form of what was referred to as the Libro Blanco (White Paper) of the National Transition of Catalonia⁵. And at 19:00 hours on 29 September 2014, the President of the Generalidad de Cataluña, in an event that took place at the Palacio de la Generalidad, presented this complete report, which contained an analysis of the various aspects that must be taken into account in the process of transition of Catalonia into an independent country, which the political forces have been promoting since that time.

The Book declared the legitimacy of the process of self-determination of Catalonia, and contemplated various procedures for the creation of the new state, depending on whether independence could be achieved via a cooperative framework negotiated with the Spanish Government or, if on the contrary, whether instruments were deployed by the State in opposition to independence. That is to say, independence was not the consequence of an

³ BOE no. 87, of 10 April, 2014.

⁴ DOGC núm 6.315, de 14 de febrero de 2013.

⁵ The White Paper is included in the form of documentation sent by Barcelona Court of Instruction nº 13, and is also to be found on DVD-1, provided in statement 2017-101743-00000112, of 15 December 2017.



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absence of negotiation with the State, but was the objective that they aspired to in any case, initially by agreement and, failing that, in a unilateral manner, forcing the Government to accept a situation of *fait accompli* that they sought to bring about.

In both of these scenarios, they would rely upon the use of popular mobilization. In this regard, the White Paper expressly indicated that: “The mobilised support of civil society could also constitute a decisive factor in achieving this objective [i.e., in forcing negotiation with the State]. In the case in which this pressure to enter into negotiations were not successful, the alternative would remain available to the Generalidad to implement the people’s express will to create an independent State by declaring independence unilaterally”.

In addition to this, the report also recognised that an effective unilateral declaration of independence would require having control of the structures of State that would allow the territory to be governed effectively. The report recognised that the state structures that would be needed in a state of independence without agreement would be basically identical to those that had been proposed during the earlier, unsuccessful negotiation process with the Spanish State, but would need to be well developed in order to overcome the institutional confrontation that would be produced by the unilateral declaration and would always need to enjoy a high degree of support among citizens. As the White Paper put it: “Any unilateral declaration or proclamation of independence in such a context would entail the will to disconnect immediately from the institutions of the Spanish State and from its legal system, in such a way that neither the authority of its institutions nor any link with that State is recognised any longer. From that moment on, the sole authority in Catalonia is the Generalidad, and the applicable legal system is solely that which emanates from the will of its institutions (including international law, which is recognised internally). Proclaiming that will, however, does not necessarily mean that this [independence] will be effective in reality, and even less that it should immediately and automatically be so. It is possible that, at least for a time, there will be conflict between the two systems, so that the authorities and systems of each side will strive to impose their authority and to win control. For this reason, the effectiveness of a unilateral proclamation of independence is to a large extent conditional on the existence of structures of the State with the capacity to exercise the functions of government over the territory and to obtain social acceptance for the exercise of that power” (p. 34).



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On the basis of this process (either agreed or involving conflict) of the declaration of independence, the Book foresaw the prospect of initiating a process to draft a Constitution. It also contemplated how one would have to promulgate a new legal system in relation to administrative, public service, and contractual matters, providing a transitional legal framework until the legal system was replaced. In addition to this, it also foresaw the sharing out of assets and liabilities with the Spanish State, as well as considering the budgetary needs of Catalonia as a new state. In relation to the organisation of the new republic, the book analysed the prospective state's economic and financial organization, including its monetary policy, the Bank of Catalonia, a number of regulated markets, the tax administration system and the customs service. And finally, it also articulated the solutions needed in order to organise the country's own administrative structures, public transport, water supplies, information and communication technologies, the regulation of competition, education, foreign policy, and even the Catalan social security system, justice, judicial bodies and provision for the security and defence of the territory.

6. On the same dates as when the President of the Generalidad de Cataluña published the White Paper for the National Transition of Catalonia, namely on 26 September 2014, as a consequence of the political agreement then existing, the Parliament approved Catalan Law 10/2014, which dealt with non-referendum public consultations and other forms of citizen participation⁶, and the Executive Council of the Generalidad promulgated Decree 129/2014 of 27 September of the Department of the Presidency of the Generalidad de Cataluña, convoking a non-referendum public consultation on the political future of Catalonia⁷.

Both the law on public consultations and the decree convoking the public consultation were suspended provisionally two days after their promulgation by virtue of a ruling of the Constitutional Court of 29 September, which communicated that order of suspension to the President of the Generalidad de Cataluña.

In spite of this decision, the suspension of these provisions was not acknowledged by the pro-sovereignty forces and, six weeks later, on 9 November 2014, a general consultation was carried out in Catalonia, presenting its inhabitants with two specific questions: a) "Do you

⁶ DOGC no. 6715, of 27 September 2014.

⁷ DOGC no. 6715, of 27 September 2014.



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want Catalonia to become a State?" and b) "If so, do you want Catalonia to become an independent State?"⁸

It should also be underlined that the Constitutional Court, in its decisions 31/2015⁹ and 32/2015¹⁰, of 25 February, made a definitive declaration of the unconstitutionality and nullity of the provisions it had earlier suspended. Specifically: a) of Article 3.3 of the aforementioned Law 10/2014 – i.e. the article on the possibility that such public consultations as convoked by the Generalidad de Cataluña could be deemed to have general or sectorial character – and b) of Decree 129/2014, which convoked the non-referendum public consultation on the political future of Catalonia.

7. Three months after the public consultation of 9 November, that is on 24 February, Decree 16/2015 was issued by the Executive Council of the Generalidad de Cataluña. This Decree set up a Commission for National Transition¹¹.

The Decree set out that the Commission for National Transition (which was placed under the umbrella of the Department of the Presidency) would be assigned to “the functions involved in the promotion, coordination and implementation of the necessary measures for the completion of the process of national transition, and the monitoring of State structures in accordance with the directives set out by the Government and under the supervision of the head of the Department”.

At the time, and still following the specifications contained in the White Paper, an “Executive Plan for the Preparation of State Structures” was published on the website of the Generalidad de Cataluña, together with another titled “Plan for Strategic Infrastructures”, both of which were included in what was referred to as “10 Strategic Government Action Projects for the National Transition”. These plans showed an affinity with the missions that were set for the Executive Council of the Generalidad in Law 3/2015 of 11 March approved by the Catalan Parliament, on fiscal, financial and administrative measures (published in the DOGC of 13 March 2015), whose twenty-second, twenty-fourth and twenty-fifth additional provisions

⁸ Declaration by Artur Más to this legal process.

⁹ BOE no. 64, 16 March 2015.

¹⁰ BOE no. 64, 16 March 2015.

¹¹ DOGC no. 6819, of 26 February 2015.



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envisaged drawing up, respectively, a) a directive plan on the tax administration of Catalonia b) a catalogue of strategic infrastructures and the creation of an interdepartmental commission to carry out the appropriate measures to guarantee continuity in the services and functioning of Catalonia's strategic infrastructures, and c) a draft law on the creation of a Catalan Agency for Social Protection.

In a ruling of 25 June 2015, the Constitutional Court, meeting in plenary session, allowed the challenge on grounds on unconstitutionality lodged by the President of the Government against Articles 69 and 95 and the twenty-second and twenty-sixth additional provisions of Catalan law 3/2015, agreeing in addition to their provisional suspension and to the communication of its decision to the Presidents of the Generalidad and to the Parliament of Catalonia, as well as its publication in the Boletín Oficial del Estado (the official gazette of the Spanish State) and in the Diario Oficial de la Generalidad de Cataluña (the official gazette of the Generalidad de Cataluña).

Similarly, in a ruling of 7 July 2015, the Constitutional Court, meeting in plenary session, agreed to allow the positive conflict of competencies lodged by the Government of the Nation against the Executive Council of the Generalidad de Cataluña opposing Decree 16/215 of the Generalidad of 24 February, and opposing all preparations and measures undertaken in application or under the scope of that Decree or the plans referred to in it, or all other stipulations and measures undertaken that may coincide with its ends. At the same time the Court agreed the provisional suspension of the Decree, communicating the decision to the President of the Government of the Generalidad de Cataluña.

In its final decision 128/2016, of 7 July¹², the Court declared Articles 69 and 95 of Law 3/2015 to be unconstitutional and therefore void, together with its twenty-second, twenty-fourth and twenty-sixth additional provisions. Subsequently, in judgement 52/2017, on 10 May, the Constitutional Court declared unconstitutional and null and void Decree 16/2015 now suspended, as well as, as it described, "the so called 'Executive Plan for the Preparation of State Structures' and the 'Strategic Infrastructure Plan', announced on the website 'govern.cat',

¹² BOE no. 192, 10 August 2016.



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through the website 'Generalitat de Catalunya' (gencat.cat), in the document '10 Strategic Government Action Plans for National Transition 2015'¹³.

8. In parallel with the efforts of the Executive Council of the Generalidad and the Parliament of Catalonia to implement the contents of the White Paper in the terms set out above, on 30 March the illegal arrangement was extended to include groups other than the parties that made up the political majority that lent support to the Executive Council of the Generalidad and that had signed the legislative pact.

In this manner, a route map was agreed in relation to the process of independence between the political parties Convergència Democràtica de Catalunya (represented by Josep Rull i Andreu) and Esquerra Republicana de Catalunya (represented by Marta Rovira i Vergés), and pro-sovereignty bodies Omnium Cultural (represented by the late Muriel Casals Couturier), the Asamblea Nacional Catalana (Catalan National Assembly – ANC – represented by its then president Carme Forcadell i Lluís) and the Asociación de Municipios para la Independencia (Association of Local Authorities for Independence – represented by its vice-president José María Foige i Rafel)¹⁴.

The draft agreement between these bodies sets out that the elections about to be held on 27 September 2015 would have the character of a plebiscite to the extent that voting for pro-sovereignty candidate lists would be deemed an implicit statement in favour of the independence of Catalonia and of the immediate initiation of a process of national transition that would lead to the proclamation of the Catalan republic within a maximum period of 18 months, creating and setting in motion the structures required by the new State and drawing up a draft constitutional text within a period of 10 months¹⁵. The result of this agreement was that all these groups began to participate in defining the political strategy to be followed for the attainment of the Catalan republic, upon which they have been working ever since.

¹³ BOE no. 142, 15 June 2017.

¹⁴ <http://www.lavanguardia.com/politica/20150330/54428571328/cdc-erc-anc-omnium-proclamar-independencia-27s.html>, http://www.eldiario.es/catalunya/politica/claves-independentista-firmada-CDC-ERC_0_372013691.html.

¹⁵ Testimony of the Attorney in the Administration of Justice in relation to documentary evidence appearing in Appendix I, Statement 2017-101743-0112.



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Days after this agreement between pro-sovereignty parties and bodies, on 12 April 2015, the pro-sovereignty body Asamblea Nacional Catalana drew up a document summarising its commitments for the years 2015 to 2018. It described as its strategic objective the goal of maintaining the unity of action of the parties and pro-sovereignty bodies (fol. 4), and of the entire social base of pro-independence forces, a goal that it was to pursue in reality.

In relation to its collaboration with the political project of the pro-sovereignty parties, the document attested that the ANC would put its efforts into ensuring the fulfilment of the resolutions of the Parliament of Catalonia promoting the process, giving special attention "to laws of disconnection, to the organisation and realisation of a binding referendum under the already established terms, and the immediate proclamation of independence in case of a victory for the 'Yes' side". In relation to executive power, it claimed that work must be done in coordination with the Executive Council in order to achieve the maximum possible international support for the right to self-determination and for recognition of the new Catalan state.

A reflection of this coordination was the fact that this same document insisted that they would propose the creation of a National Coordination body from among parties, organisations and institutions in order to guarantee unity of action, a body that would need to enjoy the support of the various district and local boards that were already in place.

Finally, the book also affirmed the importance of social movements, making a commitment to mobilize Catalan society and, faced with the possibility that the Generalidad de Cataluña may become subject to "the political and legal intervention of the Spanish State and/or the prohibition of any pro-sovereignty party", it proposed that in such scenarios "The citizenry emerges as the political agent that will drive on the independence process", while adding that all such public mobilisations must be peaceful at all times, a proviso that has been maintained at all times in all formal statements of the Assembly or its representatives¹⁶.

9. In this context, during the elections held on 27 September 2015, the electoral group Junts per Si, made up of the political parties Convergència Democràtica de Catalunya and Esquerra Republicana de Catalunya, obtained a majority of votes, even though the group fell short of an absolute majority of deputies in the new Parliament of Catalonia.

¹⁶ Documentary evidence appearing in Appendix II to Statement 2017-101743-0112.



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Conduct of the Parliament of which the accused were members:

10. Once the new parliament was constituted on 9 November 2015, it approved what was to be the first parliamentary resolution of the 11th legislature. Resolution 1/XI expressly proclaimed that the “democratic mandate obtained in the recently conducted elections of 27 September ... points to the commencement of a non-subordinated process of constitutional formation,” announcing at the same time “the commencement of a process of creation of the independent Catalan State in the form of a republic (...)”.

This Resolution was appealed before the Constitutional Court, which, in its Decision 259/2015, of 2 December¹⁷, declared that it attributed to the Parliament of Catalonia a degree of sovereignty superior to that deriving from the autonomy recognised by the Constitution for the nationalities that make up the Spanish Nation, and noted that the autonomous parliamentary chamber did not have the right to set itself up as a source of legal and political legitimacy to the extent of seizing for itself the power to endanger the constitutional order upon which its own authority was based. For all these reasons, it declared the aforementioned parliamentary resolution unconstitutional and void.

11. Despite this decision, less than two months later, on 20 January 2016, the Parliament of Catalonia approved Resolution 5/XI, for the creation of a “Comisión de Estudio del Proceso Constituyente” (Study Commission on Constitutional Formation) and one week later, on the 28 January 2016, established and commenced the work of the newly created Study Commission, which had drafted its conclusions before the Constitutional Court had definitively resolved the legal challenge that had been filed against its creation.

The pronouncement was made via Order of the Constitutional Court 141/2016 of 19 July¹⁸, which rejected the constitutionality of this activity on the grounds that it violates the provisions of the aforementioned decision [i.e. Decision of the Constitutional Court 259/2015].

Thus the order was handed down in the knowledge of the conclusions arrived at by the Study Commission, which it summarised as follows:

¹⁷ BOE no. 10, 12 January 2016.

¹⁸ BOE no. 196, 15 August 2016.



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a) That there exists no right to decide for the Catalan people within the framework of the Spanish Constitution and Spanish law;

b) That the exercise of any such right to decide was only made possible by means of a process of disconnection;

c) That Catalonia had a legitimate right to begin a process of constitutional formation; and

d) That such a process must involve three different phases: an initial participative phase, which should involve a call for reflection and debate over a broad social forum, a secondary phase of disconnection, in which it was expected that laws of disconnection would be approved, along with the application of a unilateral democratic mechanism that would serve as an enabler leading to the third and final phase, at which stage constituent elections would be called.

In addition to annulling Resolution 5/XI, which created the Study Group on Constitutional Formation, the Constitutional Court also warned the relevant authorities and their leaderships, and especially the Bureau of Parliament, of its duty to prevent or halt any initiative that entailed ignoring or evading its orders.

12. Despite these warnings, one week later, on 27 July 2016, the President of the Parliament allowed¹⁹ a debate to be held on the conclusions of the Study Commission on Constitutional Formation and put a vote to the plenary session of the Parliament in which its conclusions were approved, giving rise to Resolution 263/XI of the Parliament.

13. Resolution 263/XI, in which these conclusions were approved by the Parliament, was also challenged in the Constitutional Court, which on 1 August 2016 suspended its executive function and went on to draw up order 170/2016, of 6 October²⁰, in which it declared the new Resolution to be void on the grounds that the conclusions approved by it were not compatible with the Constitution.

¹⁹ Carme Forcadell stated during her declaration before this investigating judge that she did so on the instructions of the same plenary session.

²⁰ BOE no. 276, 15 November 2016.



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The Constitutional Court also agreed, and acted accordingly²¹, to notify personally the President of the Parliament of Catalonia, the other members of the Bureau of Parliament and the Secretary General of Parliament, as well as the President and other members of the Executive Council of the Government of the Generalidad de Cataluña, of the order of annulment, to warn them to abstain from taking any actions tending to promote the pursuit of Resolution 263/XI, to remind them of their duty to prevent or halt any initiative, legal or material, that may directly or indirectly entail ignoring or evading the nullity of said resolution and to appraise them of possible personal liabilities, including criminal liabilities, that they could incur for any failure to comply with the orders of the Court.

The Court also agreed to take testimony from individuals so that the Public Prosecutor's Office, if it deemed appropriate, could take the appropriate actions before the competent court, in relation to any possible liability that may have been incurred by the President of the Parliament of Catalonia, Mrs. Carme Forcadell i Lluís and, wherever appropriate, any other persons, for breaching the terms of the first paragraph of Art. 87.1 of the Organic Law governing the Constitutional Court in relation to the events concerning the application for enforcement.

14. Despite all the pronouncements issued by the Constitutional Court and the suspension of Resolution 262/XI of 4 October 2016 by the Parliament of Catalonia, the Bureau of Parliament allowed debate to proceed on two proposals: a) to hold a binding referendum on the independence of Catalonia and b) to initiate a process to draft a constitution.

The members of the Bureau of Parliament who took the side in favour of allowing the proposals for debate were the following: its President, Carme Forcadell i Lluís, of the pro-sovereignty group Junts pel Sí (ERC); Lluís María Corominas i Díaz, as First Vice-president, and member of Junts pel Sí (CDC); Anna Simó i Castelló, First Secretary, of the pro-sovereignty group Junts pel Sí (ERC); Joan Josep Nuet i Pujals, Third Secretary, of Catalunya

²¹ This has been confirmed by all the ministers and members of the Bureau of Parliament who were questioned on the subject, as well as being supported by the testimonies from the resolutions handed down by the Plenary Session of the Constitutional Court in its various proceedings and by the testimonies on the notification procedures, subpoenas and warnings issued, which were required by the investigating judge of the Catalan High Court of Justice and sent to the Constitutional Court. Preliminary Inquiries 3/2017 of the Catalan High Court of Justice. Volume IV. fol. 942 to 994



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Sí que es Pot (EUiA) and Ramona Barrufet i Santacana, Fourth Secretary, of the pro-sovereignty group Junts pel Sí (CDC).

After the plenary debate, both proposals were voted on and approved, resulting in Parliamentary Resolution 306/XI, which contained the following:

- a. In relation to the referendum, Resolution 306/XI proclaimed the right to self-determination of Catalonia and called on the Government of the Autonomous Community to organise this new public consultation. At the same time, the Parliament itself created a “Comisión de Seguimiento” (Monitoring Commission) for the organisation of the referendum.
- b. In relation to the process to draft a constitution, the same resolution urged the Executive Council of the Generalidad: i. To set up an Advisory Committee; ii. To set out a timetable for the drafting of a constitution; iii. To provide the necessary resources; and iv. To facilitate the deliberation and decision-making that may emerge from said process. For its part, the Parliament also took on the task of creating a Monitoring Commission to follow the drafting of a Constitution and to urge the Executive Council of the Generalidad de Cataluña to provide the necessary tools to call constituent elections within 6 months of the referendum on self-determination in the event that that referendum should yield a result favourable to independence.

15. Order of the Constitutional Court 24/2017 of 14 February²² once more declared Resolution 306/XI to be null and void, as it deemed the resolution to be pursuing the very same purpose of developing a process to draft a Constitution and of declaring an independent republic as was pursued by the earlier resolutions.

And the Court once again agreed that its decision should be notified to the President of the Parliament of Catalonia, to the other members of the Bureau of Parliament and to the Secretary General of the Parliament, as well as to the President and other members of the Executive Council of the Generalidad de Cataluña, including a warning to refrain from any

²² BOE no. 38, 25 March 2017.



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actions aimed at complying with Resolution 306/XI in its annulled sections, and reminding it of its duty to prevent or halt any initiative, whether legal or material, that directly or indirectly entailed ignoring or evading the nullity of the relevant paragraphs of said resolution, warning them of the possible liabilities, including criminal liabilities which they might incur if they failed to comply with the orders of the Court.

It also agreed to take testimony from individuals so that the Public Prosecutor's Office could, where necessary, take the appropriate actions in relation to any possible criminal liability that may have been incurred by the President of the Parliament of Catalonia Ms Carme Forcadell i Lluís, the First Vice-President of the Bureau of Parliament Mr Lluís María Corominas i Díaz, the First Secretary of the Bureau Ms Anna Simó i Castelló, the Third Secretary of the Bureau, Mr Joan Josep Nuet i Pujals, and the Fourth Secretary of the Bureau, Ms Ramona Barrufet i Santacana, for breaching the terms of the first paragraph of Art. 87.1 of the Organic Law governing the Constitutional Court in relation to the events concerning the application for enforcement.

16. In any case, three days after the publication of this order in the BOE, the Parliament approved Law 4/2017 on the budgetary arrangements of the Generalidad de Cataluña²³, in which a variety of budgetary lines were included in relation to electoral expenses and consultations, as well as an Additional Provision 40, which establishes an obligation of the Executive Council of the Generalidad to facilitate funding for the referendum on the political future of Catalonia, as agreed in Resolution 306/XI.

17. In the face of the foregoing, to which may be added Constitutional Court Decision 51/2017, of 10 May²⁴, which declared unconstitutional Articles 1 to 30, 43 and 45 of the Catalan Law on public consultations, and Constitutional Court Decision 90/2017, of 5 July²⁵, which declared unconstitutional the budgetary items included in Law 4/2017 on budgetary spending, as well as its Additional Provision 40, a bill on the referendum on self-determination was presented in the Parliament of Catalonia on 31 July 2017.

²³ DOGC no. 7340, of 30 March 2017.

²⁴ BOE no. 142, 15 June 2017.

²⁵ BOE no. 171, 19 July 2017.



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The bill on the referendum on self-determination, after having proclaimed the people of Catalonia as a sovereign political subject (in Article 1) and after having stated the hierarchical priority of that law over any other rule that may enter into conflict with it (Article 3.2.), convoked the citizenry of Catalonia to decide on the political future of Catalonia by means of a referendum that would contain the question “Do you want Catalonia to become an independent state in the form of a republic?” (in Art’s 4.1 and 4.2).

In any case, in Article 4.4. it made the inescapable provision that “If after the counting of votes validly cast there should be more affirmative than negative votes, the result will entail the independence of Catalonia. To this end, the Parliament of Catalonia, within two days of the proclamation of the official results by the electoral commission, shall meet in ordinary session in order to make a formal declaration of the independence of Catalonia, to specify its effects and to initiate a process to draft a Constitution”.

Article 9 fixed 1 October as the date of the referendum and created a new electoral administration for Catalonia, consisting of: a) the Electoral Commission of Catalonia, as a supreme body made up of five spokespersons appointed by the Parliament of Catalonia; b) the electoral commissions of the regions of Barcelona, Tarragona, Lleida and Girona; c) the polling stations and d) the electoral administration of the Executive Council of the Generalidad de Cataluña.

The proposal, while it was signed by a wide variety of parliamentarians, was presented as a bill by the parliamentary groups Junts pel Sí and Candidatura d’Unitat Popular-Crida Constituent (Popular Unity Candidacy–Constituent Call – CUP-CC) on 6 September 2017, in accordance with the requirements of Article 109.b of the Standing Orders of the Parliament, by the spokespersons of the parties, Marta Rovira i Vergés (spokesperson for the Junts pel Sí group) and Anna Gabriel i Sabaté (spokesperson for the CUP-CC group)²⁶.

18. Similarly, on 28 August 2017, a bill on the legal transition and the foundation of the republic was submitted to the general register of the Parliament of Catalonia. This bill,

²⁶ Volume 1.1 of the documentation of the Parliament provided by the Central Court of Preliminary Investigation n° 3.



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which made provisions for the case that the referendum should be favourable to independence, contained details on how the independent republic of Catalonia would be constituted.

The bill on the legal transition and foundation of the republic not only constituted the republic of Catalonia and attributed sovereignty to the people of Catalonia, but also set out detailed regulation on: a) its territory (Article 6), b) nationality (Articles 7 to 9); c) a succession of regulatory orders and administrations (Clause II); d) the rights and duties of citizens (Clause III); e) the institutional system (Clause IV), providing, among other things, for the state's Parliament, the Presidency of the republic, its government and public administration, the electoral commission of Catalonia and the electoral register or local government; f) judicial authority and the administration of justice (Clause V); g) finance (Clause VI) and h) the process to draft a Constitution (Clause VII).

Finally, the Law included in its third final provision that the legislation "shall enter into force as soon as it has been approved by the Parliament of Catalonia, it has been officially promulgated and the provisions of Article 4.4 of the Law on the referendum on self-determination of Catalonia have been satisfied."

The bill, in accordance with the same Article 109 b of the standing orders of the Parliament, was presented by Lluís M. Corominas i Díaz, who had by then become president of the Junts pel Sí parliamentary group; Marta Rovira i Vergés, spokesperson of the Junts pel Sí parliamentary group; Mireia Boyá Busquet, president of the CUP-CC parliamentary group; and parliamentarians Jordi Orobitg i Solé, Benet Salellas i Vilar and Gabriela Serra Frediani.²⁷

19. Despite reports of the Chief Attorney of the Parliament as well as by its Secretary General, stating that both bills were contrary to the above-described prohibitions handed down by the Constitutional Court, as well as violating the requirements expressly incumbent on the Bureau of Parliament to prevent or halt any initiative that entailed ignoring or evading the nullity of the parliamentary resolutions, such as these new bills were contemplating, on the morning of 6 September, 2017, the Bureau of Parliament of Catalonia

²⁷ Volume 1.3 of the parliamentary documentation submitted by the Central Court of Preliminary Investigation nº 3.



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included said bills on the order of business of the Parliament and allowed the legislative initiative to proceed.

The members of the Bureau of Parliament who took the side in favour of allowing the proposals for debate were the following: its President, Carme Forcadell i Lluís, of the pro-sovereignty group Junts pel Sí (ERC); Lluís Guinó Subiros, as First Vice-president, and member of Junts pel Sí (CDC); Anna Simó i Castelló, First Secretary, of the pro-sovereignty 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-sovereignty group Junts pel Sí (CDC).

20. The Parliament meeting in plenary session, after a large proportion of the parliamentarians present walked out of the session in the wake of a debate in which they expressed the illegal nature of the decisions being proposed, approved both bills as Laws 19/2017, of 6 September, on the referendum on self-determination (DOGC, 6 September 2017) and 20/2017, of 8 September, on the legal transition and the foundation of the republic (DOGC, 8 September 2017).²⁸

²⁸ Folios 1 to 354 and 432 to 446, belonging to Volumes 1.1, 1.2, 1.3, 1.4, 1.5 and 2.1, of the parliamentary documentation submitted by the Central Court of Preliminary Investigation nº 3, from its Preliminary Investigations 82/2017, contains the documentation referred to with the corresponding attestations as submitted by the Parliament of Catalonia.

Volume 1.1, Documentation relating to the processing, the inclusion on the order of business, the debate and the approval by the plenary session of Law 19/2017, of 6 September, on the referendum on self-determination.

Volume 1.2, documentation referring to the processing, the inclusion on the order of business, the debate and the approval by the plenary session of Resolution 807/XI, through which 5 trustees were named to sit on the electoral commission of Catalonia.

Volume 1.3, Documentation relating to the processing, the inclusion on the order of business, the debate and the approval by the plenary session of Law 20/2017, of 8 September, on the legal transition and the foundation of the republic.

Volume 1.4. Minutes of sessions 117 and 118 of the Bureau of Parliament of Catalonia, held on 6 and 7 September 2017. Agreements of the Bureau of Parliament for the approval of Law 19/2017, of Resolution 807/XI, by which five trustees were named to sit on the Electoral Commission of Catalonia, and of Law 20/2017, of 8 September, on the legal transition and the foundation of the republic.

Volume 1.5. Minutes from session no. 65 of the Board of Spokespersons of the Parliament of Catalonia, held on 6 and 7 September 2017, regarding the approval of Law 19/2017, of Resolution 807/XI, by which five trustees were named to sit on the Electoral Commission of Catalonia, and of Law 20/2017, of 8 September, on the legal transition and the foundation of the republic.

Volume 2.1. Minutes of session no. 42 of the Parliament meeting in plenary session, held on 6, 7 and 8 September 2017 and the session schedules no. 80, 81 and 82, corresponding to the plenary session held on 6, 7 and 8 September 2017.



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Law 19/2017 was challenged by the Office of the Attorney General of the State before the Constitutional Court, which allowed the challenge on grounds of unconstitutionality and agreed to suspend the validity and application of the Law in its ruling made on 7 September 2017 (BOE, 8 September 2017), definitively declaring the regulation to be unconstitutional and void in Decision 114/2017, of 17 October (BOE, 24 October 2017).

Law 20/2017 was challenged by the Office of the Attorney General of the State before the Constitutional Court, which allowed the challenge on grounds of unconstitutionality and agreed to suspend the validity and application of the Law in its ruling made on 12 September 2017, definitively declaring the regulation to be unconstitutional and void in Decision 124/2017, of 8 November.²⁹

21. On 7 September, after business was allowed to proceed on the question thanks to the favourable votes of the same members of the Bureau as were referred to above, the Parliament of Catalonia approved Resolution 807/XI.

In it, under the third Additional Provision of the so-called Law 19/2017, of 6 September, on the referendum on self-determination, the Parliament of Catalonia named as members of the electoral commission of Catalonia Marc Marsal i Ferret, Jordi Matas i Dalmases, Marta Alsina i Conesa, Tania Verge i Mestre and Josep Pages Masso, and designated Josep Costa i Rossello and Eva Labarta i Ferrer as first and second substitutes, respectively.³⁰

Law 20/2017 was challenged by the Office of the Attorney General of the State before the Constitutional Court, which allowed the challenge and agreed to suspend the validity and application of the resolution in its ruling made on 7 September 2017,³¹ definitively declaring it to be unconstitutional and void in its Decision of 31 October 2017.

22. Despite the resolutions of the Constitutional Court, when the referendum took place on 1 October in a form to be described later in this document, the Parliament of Catalonia persisted in carrying out the following activities in an effort to make the proclamation of independence effective:

²⁹ BOE, 16 November 2017.

³⁰ DOGC, 7 September 2017.

³¹ Appeal 4332-2017 to the Constitutional Court, BOE, 8 September 2017.



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- a. On 4 October 2017, the Junts pel Sí and CUP-CC parliamentary groups submitted a request for the appearance of President of the Generalidad before the Parliament of Catalonia, in order to present the results of the referendum.
- b. Two days later, on 6 October, by means of a letter signed by the Vice-President of the Government of the Generalidad Oriol Junqueras, its spokesperson Jordi Turull and its Minister for External Affairs Raül Romeva, the Government of the Autonomous Community communicated its count of the result of the referendum to the Parliament, claiming that the “Yes” side had won 90.18% of votes cast.
- c. On 10 October 2017, the President of the Generalidad Carles Puigdemont y Casamajó appeared before the Parliament meeting in plenary session, and after relating the aforementioned count of the result of the plebiscite, declared his willingness to comply with the mandate given by the people of Catalonia to become an independent state in the form of a republic, but added that the Executive Council of the Generalidad, and he as its President, proposed to suspend the effect of the declaration of independence in order to arrive at an agreed solution.

Immediately following this act, the parliamentarians of the Junts pel Sí and Cup-CC parliamentary groups, in a solemn ceremony held outside the parliamentary chamber, signed a declaration of independence. In that declaration, they agreed:

- i). To constitute the Catalan republic as an independent sovereign state; ii). To prepare to enact the Law on the legal transition and the foundation of the republic; iii). Initiate a process to draft a Constitution; iv). To declare their willingness to open negotiations with the Spanish State, based on a relationship between equals; v). To communicate to the international community and to the authorities of the European Union the constitution of the Catalan republic and the proposal to enter into negotiations with the Spanish State, appealing to the States and international organisations to recognise the Catalan republic as an independent sovereign state; vi). To urge the Executive Council of the Generalidad to adopt the necessary measures to make this declaration of independence and the terms of the Law on the legal transition and the foundation of the republic effective in full



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- and vii). To call on each and every citizen to build a state capable by its actions and behaviour of satisfying the collective aspirations of the people.
- d. On 11 October 2017, the President of the Spanish Government transmitted a demand to the President of the Autonomous Community to comply with its constitutional obligations.
 - e. On 19 October, Carles Puigdemont, having failed to comply with earlier appeals to him to extricate Jordi Cuixart i Navarro (president of the Òmnium Cultural organisation), Jordi Sánchez Picanyol (president of the pro-sovereignty organisation Asambleia Nacional Catalana) and Josep Lluís Trapero (Head of the the Catalan police force, the Mossos d'Esquadra) of the criminal imputations against them, and that there be a meeting between the two governments in order to explore future agreements, informed the President of the State Government that the Parliament of Catalonia would proceed to a vote on the declaration of independence.
 - f. The situation led to the convening of an extraordinary meeting of the Council of Ministers, which, on October 21, activated the mechanism for the application of Article 155 of the Spanish Constitution³² and proposed a series of measures to the Spanish Senate.
 - g. As a consequence of this, on 23 October, at the request of the groups Junts pel Si and CUP, the Bureau of Parliament of Catalonia allowed a general debate to be held on the application of Article 155 of the Spanish Constitution.
 - h. In the light of this situation, on 26 October, Santiago Vila, Minister for Business of the Government of Catalonia, submitted his resignation from the post.

³² Article 155 of the Spanish Constitution establishes that: "If an Autonomous Community should fail to fulfil the obligations imposed upon it by the Constitution or by other laws, or should act in a manner seriously prejudicial to the general interest of Spain, the Government, after serving notice on the President of the Autonomous Community and having failed to receive satisfaction, may, upon receiving the approval of an overall majority of the Senate, take the necessary measures in order to compel the Autonomous Community to meet said obligations or to protect said general interest."



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- i. On the following day, 27 October 2017, Lluís Corominas i Díaz, Marta Rovira i Vergés, Mireia Boyá Busquet and Anna Gabriel i Sabaté, presidents and spokespersons for the parliamentary groups Junts pel Si and CUP, submitted two draft resolutions to be voted on by the plenary session: the objective of the first of these was to declare the independence of Catalonia and the second was aimed at initiating a process to draft a Constitution for the new republic.

These proposals were allowed as a result of the same support within the Bureau as has already been referred to earlier, and they were submitted to a vote by 82 of the 135 members of Parliament, due to the fact that the rest of its members had walked out of the chamber, complaining about the illegality of the proposals.

Due to a request submitted by the member Mr Roger Torrent i Ramió, the vote was carried out by means of a secret ballot of the participating members, and resulted in 70 votes in favour, 10 against and 2 abstentions.

- j. The first of the approved proposals contained two parts,

First, in which the following was declared: i): The constitution of the Catalan republic as an independent sovereign state; ii). The enactment of the Law on the legal transition and the foundation of the republic; iii). The commencement a process of constitutional formation; iv). The declaration of a willingness to open negotiations with the Spanish State, based on a relationship between equals; v). The communication to the international community and to the authorities of the European Union of the constitution of the Catalan republic and the proposal to enter into negotiations with the Spanish State, appealing to the States and international organisations to recognise the Catalan republic as an independent sovereign state; vi). A demand on the Government of the Generalidad to adopt the necessary measures to render this declaration of independence and the terms of the Law on the legal transition and the foundation of the republic effective in full and vii). A call on each and every citizen to build a state capable through its actions and behaviour of satisfying the collective



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aspirations of the people. Pursuant to which, it assumes the mandate of the people of Catalonia as expressed in the referendum on self-determination of 1 October and declares that Catalonia is to become an independent state in the form of a republic.

In addition to this it also resolved as follows: 1). To promulgate the necessary decrees in order to provide the administrative services with the personnel and material they need to allow them to issue documents accrediting Catalan nationality to the citizenry; 2) to establish a regulatory procedural framework for the acquisition of Catalan nationality; 3) to initiate the agreement of a treaty on dual nationality with the government of the Kingdom of Spain; 4) to set out the provisions necessary for the adaptation, modification and removal of the local, autonomous and state law in force before the entry into force of the Law on the legal transition and the foundation of the republic; 5) to set out the necessary decrees in order to ensure the restoration and effectiveness of the rules that had existed prior to the succession of legal orders, and that had been annulled or suspended for reasons of jurisdiction by the Constitutional Court and the other Courts; 6) To pursue recognition of the Catalan republic on by all states and institutions; 7) to establish, using the appropriate procedure, the list of international treaties that should be deemed to continue to apply, and those that should be deemed inapplicable; 8) to establish a framework according to which all officials and personnel of the Spanish State that have up until then served in Catalonia may be integrated into the administration of the Generalidad de Catalonia; 9) to inform the Parliament of the list of contracts, accords and agreements subject to subrogation by the Catalan republic; 10) to agree the appropriate course of action in relation to exercising authority on fiscal matters, social security, customs and real estate registry; 11) to foster the actions and legislative measures necessary for the creation of a publicly owned development bank; 12) to foster the actions and legislative measures necessary for the creation of the bank of Catalonia, to exercise the functions of a central bank; 13) to foster the actions and legislative measures necessary for the creation of all other regulatory authorities; 14) to open a period of negotiations with the Spanish State in relation to economic and financial rights and obligations; 15) to draw up



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an inventory of property held under the title of the Spanish State located within the national territory of Catalonia in order to effect transfer of title to the Catalan state and 16) to draw up a proposal for the distribution of assets and liabilities between the Kingdom of Spain and the republic of Catalonia, commencing a period of negotiation between the representatives of the two States, and submitting the agreement reached to the Parliament of Catalonia for approval.

It was also agreed to publish all the declarations and resolutions in the *Diario Oficial de la Generalidad de Cataluña* (the official gazette of the Generalidad de Cataluña).

- k. The second of the resolutions approved by the Parliament declared the commencement of a process to draft a Constitution, calling on the Government of the Generalidad: 1) To activate all resources immediately in order to give effect to the process to draft a Constitution, which would culminate in the drawing up and approval of a constitution of the republic by the Parliament; 2) to constitute the Advisory Council for the process to draft a Constitution within fifteen days; 3) to convene, disseminate and execute the decision-making phase of the process to draft a Constitution, gathering together proposals and submitting them to public consultation and 4) to convene constituent elections once all phases of the process to draft a Constitution have been completed. Similarly, it also agreed to constitute a Parliamentary Commission to monitor the process to draft a Constitution.³³

³³ Folios 355 to 431 and Volume 2.2, of the parliamentary documentation submitted by the Central Court of Preliminary Investigation nº 3, from its Preliminary Investigations 82/2017, contain the documentation referred to with the corresponding attestations as submitted by the Parliament of Catalonia.

Volume 1.6, Documentation relating to the processing, the inclusion on the order of business, the debate and the approval by the plenary session of the Resolution of 27 October 2017.

Volume 1.7, Minutes of sessions 131 and 133 of the Bureau of Parliament of Catalonia, held on 23 and 27 October 2017 respectively, in which, it is recorded that, the Bureau allows onto the order of business a request for general debate on the application of Article 155 of the Spanish Constitution and its possible effects, and which record the agreements reached by the Bureau of Parliament in relation to the treatment of Resolution of 27 October 2017 subsequent to the debate.

Volume 1.8, Minutes of sessions 77 and 79 of the Board of Spokespersons of the Parliament of Catalonia held on 23 and 27 October 2017 respectively, relating to the general debate on the application of Article 155 of the Spanish Constitution and its possible effects, and in relation to the treatment of the Resolution of 27 October 2017 subsequent to the debate.



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23. In the face of this reality, the plenary session of the Spanish Senate, noting “the extraordinary gravity of the failure to comply with its constitutional obligations and of the actions gravely inimical to the general interest taken by the institutions of the Generalidad de Cataluña”, set out an agreement on the same day 27 October 2017 approving the measures necessary to guarantee compliance with its constitutional obligations and to protect the general interest on the part of the Generalidad de Cataluña that had been adopted in the agreement approved by the Council of Ministers on 21 October 2017, making a number of specific modifications, which are listed in detail in said Agreement (BOE, 27 October 2017). This Agreement dictated the immediate dismissal of the Government of the Generalidad de Cataluña and called for elections in the Autonomous Community for the formation of a new Parliament.

Conduct of the Executive Council of the Generalidad of Catalonia

24. On the same day, 6 September 2017, after Law 19/2017 on the referendum on self-determination was approved by the Parliament of Catalonia, the entirety of the membership of the Government of Catalonia, ignoring once again the requirements of the Constitutional Court, signed Decree 139/2017 on the convocation of the referendum, whose sole article states that “in accordance with the terms of Article 9 of Law 19/2017 of 6 September on the referendum on self-determination, published in the Official Gazette of the Generalitat de Catalunya no. 7449 on 6 September, at the instigation of all members of the Government, a referendum on the self-determination of Catalonia is hereby convoked, to take place on 1 October 2017 in accordance with Law 19/2917 of 6 September on the referendum on self-determination”.³⁴

The decree was signed by Carles Puigdemont i Casamajó, President of the Generalidad de Cataluña; Oriol Junqueras i Vies, Vice-President of the Government and Minister of Economy and Finance; Jordi Turull i Negre, Minister of the Presidency; Raül Romeva i Rueda, Minister of the Department of External and Institutional Relations, and Transparency; Meritxell Borràs i Solé, Minister of Governance, Public Administration and Housing; Clara Ponsatí i Obiols, Minister of Education; Antoni Comín i Oliveres, Minister of

Volume 2. Minutes of the Parliament meeting in plenary session.

³⁴ DOGC no. 7450, of 7 September 2017.



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Health; Joaquim Forn i Chiariello, Minister of the Interior; Josep Rull i Andreu, Minister of Territorial Affairs and Sustainability; Lluís Puig i Gordi, Minister of Culture; Carles Mundó i Blanch, Minister of Justice; Dolors Bassa i Coll, Minister of Labour, Social Affairs and Families; Santiago Vila i Vicente, Minister of Enterprise and Learning, and Meritxell Serret i Aleu, Minister of Agriculture, Livestock, Fisheries and Food.

The Constitutional Court meeting in plenary session, through its order of 7 September 2017, agreed to allow the challenge that the Government of Spain filed against this decree of the Autonomous Community, suspending the application of said decree and any action pursuant to it,³⁵ and handed down its definitive Decision 122/2017, of 31 October 2017, declaring the decree to be unconstitutional and void.³⁶

25. On the same date, 6 September 2017, the Department of the Vice-Presidency and of Economy and Finance of the Generalidad de Cataluña, headed by Oriol Junqueras i Vies, approved Decree 140/2017 of 6 September on additional regulations for the conduct of the referendum on self-determination of Catalonia, which, as was indicated in its Article 1, had the objective of “setting out the additional regulations governing the process of holding the referendum on self-determination”, assembling the various provisions that were considered necessary on the electoral commission, electoral rolls, campaigning by official institutions, the voting procedures, scrutiny of votes, international observation, administration and the employment impact on participants.³⁷

The decree was signed by the President of the Generalidad de Cataluña Carles Puigdemont i Casamajó, and by the Vice-President of the Government and Minister of Economy and Housing.

Once again, the Constitutional Court meeting in plenary session, through its order of 7 September 2017,³⁸ agreed to allow the challenge to this decree of the Autonomous Community filed by the Government of the nation, suspending the application of said decree and any

³⁵ BOE no. 216, 8 September 2017.

³⁶ BOE no. 278, 16 November 2016.

³⁷ DOGC no. 7450, 7 September 2017.

³⁸ BOE no. 216, 8 September 2017.



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action pursuant to it, and handed down its definitive Decision 121/2017, of 31 October 2017, declaring the Decree to be unconstitutional and void.³⁹

26. On the same day as the order of suspension was issued by the Constitutional Court, the Executive Council of the Generalidad – at the instigation of the Vice-President and of the Ministers of the Presidency and of Institutional Affairs and the Exterior, formalised a specific agreement authorising the various Departments to take the necessary actions and conclude the necessary contracts for the conduct of the referendum.

In specific terms, the agreement authorised the following:

- a. The design, printing, supply and distribution of electoral material.
- b. The drawing up and dissemination of the electoral register.
- c. The communication to Catalans residing outside the territory on the mechanism provided to facilitate their participation.
- d. The creation of an information web page, as well as the acquisition and reservation of domains, and the use of already existing domains.
- e. The procurement, contracting and design of the communication campaigns of official institutions.
- f. The determination of census sections and polling stations, along with the identification of and formal communication with the staff of such units.
- g. The use of spaces under the ownership of the Generalidad de Catalunya.
- h. The creation of a registry of contributors.

³⁹ BOE no. 218, 16 November 2016.



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- i. The use of all human, material and technological resources in order to guarantee the proper organisation and conduct of the referendum on self-determination.⁴⁰

27. Despite the repeated declarations of unconstitutionality and nullity of the various parliamentary initiatives described above (the observance of which had been demanded personally of the various Ministers of the Government of the Generalidad), and despite the suspension and nullity of the decrees convoking the referendum, the executive bodies of the Generalidad de Catalunya persisted in their on-going and obsessive activity in order to create what they referred to as state structures (which would allow an effective state of independence in accordance with the provisions of the White Paper), as well as disseminating their project and promoting the greatest possible support that could be obtained from the international community and citizenry, exactly as they had done over the entire course of the legislative term, in addition to deploying the operations of the public administration in a manner they considered necessary in order to carry out the vote on self-determination referred to above.

28. The Centre for Telecommunications and Information Technologies (Centro de Telecomunicaciones y Tecnologías de la Información – CTTI), a body created under public law possessing its own legal personality, was created by Law 13/1993, of 28 December⁴¹.

The Centre is under the supervision of the Department of the Presidency, which was headed by Jordi Turull i Negre between 14 July 2017 and 28 October 2017. Among the functions of the Centre is the coordination, supervision and control of the execution of the telecommunication systems and services appropriate to the needs of the administrative bodies of the Generalidad in this field (Art's 1 and 2 of that Law).⁴²

The efforts of the Civil Guard have shown that within that institution were created a variety of websites, platforms and computer programs that were used to carry out the illegal

⁴⁰ This agreement and its internal dissemination figure as documentation obtained from the interception of electronic mails as approved by this investigating judge. It appears in Appendix 7 (fol. 1309 to 1313) to Statement 2018-101743-0010, of February 2018.

⁴¹ DOGC no. 1840, 31 December 1993. BOE no. 16, 19 January 1994.

⁴² Both the document “enfocats” (whose credibility is to be analysed), and the agenda obtained from Josep María Jové, express the observation that the Centro must be strengthened as part of the process of creation of true State structures.



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referendum of 1 October, and that control of it was ultimately and in reality exercised by the Minister.⁴³

Despite the fact that many of these website were created in duplicate, with some coming on line as the forces and agencies of State security closed others, the following may be highlighted:

- a. The “referendum.cat” website, which came on line on 6 September 2017 and immediately after the convocation of the referendum by means of Decree 139/2017 (along with the “referendum.eu” domain).
- b. Within the “referendum.cat” domain was an application referred to as “Cridas” (calls), whose url was “https://connectat.voluntariat.gencat.cat/crida/66”. This application was used for the recruitment of up to 47,498 volunteers to cover the requirements for the conduct of the referendum in relation to the set-up of 2,706 polling tables.⁴⁴⁴⁵
- c. Also activated from inside the referendum.cat domain were a number of links referring to the referendum, including a page that instructed on how one should exercise one’s right to vote and another that concentrated on the registration of Catalans living abroad (registreatalans.exteriors@gencat.cat), requiring as it did that one must register there in order to be able to exercise one’s vote.
- d. The “sindicaturaelectoral.cat” website was also created.

29. Together with all this, the premises that were to be used as polling stations were organised from within the Executive Council of the Generalidad and the pro-sovereignty parties. This activity was headed by the Presidency and Vice-Presidency of the Generalidad themselves, whose office-holders sent a letter to every mayor in Catalonia on 6 September

⁴³ Call 76, appearing in Appendix 8 to Statement 2018-101743-5.

⁴⁴ Police report derived from the interception of telephone calls, appearing as folios 134 and seq. in Statement 2018-1017143-5. Similarly, electronic mail, appearing in fol. 137 of the same Statement.

⁴⁵ Similarly, folios 2446 and seq., in Preliminary Inquiries 82/17, of Central Court of Preliminary Investigation no. 3.



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2017, in which they required the facilitation of all voting centres ordinarily used in other electoral processes.⁴⁶

In relation to this activity, intercepted telephone conversations indicate⁴⁷ the participation of Antoni Comín Oliveres, Minister of Health of the Generalidad de Catalunya and Josep María Jové i Lladó as prominent officials in the search for premises on which to set up polling stations, pursuant to which they made arrangements with municipal bodies favourable to the illegal public consultation in order to achieve this facilitation, and also searched for alternative premises in municipalities that did not give such support and at locations where centres were shut down as a result of judicial action.

These conversations also indicate the participation of Neus Lloveras i Massana⁴⁸ in this activity.

As many of the voting centres were located in Primary Care Centres or other healthcare facilities⁴⁹⁵⁰, Minister of Health Antoni Comín agreed on 22 September 2017 the removal from office of the representatives of the Government on the 29 health trusts and public healthcare bodies in Catalonia in order to ensure that the facilitation of these voting centres would lie exclusively within his personal power, appointing himself as president and head of all boards of governors, just as he already was in relation to the Barcelona Health Trust. He also announced that the removal from office would be reversed as soon as 1 October had ended.

30. On 28 September 2017, the most senior figures of the Mossos d'Esquadra met with the president of the Generalidad de Catalunya, the vice-president and the Minister of the Interior, Joaquim Forn i Chiariello. At said meeting⁵¹, they informed the members of the

⁴⁶ F. 121 Statement 2018-101743-5.

⁴⁷ Appendix 8 to Statement 2018-101743-5, as well as the police report appearing in folios 114 and seq.

⁴⁸ Call 40, among others, appearing in Appendix 8.

⁴⁹ Statements of the Mossos d'Esquadra dated 1 October 2017 (see register 808380/2017 AT ACII), appearing in Separate Element no. 3 of DP 3/2017 of the Catalan High Court of Justice (and, as testimony in case 82/17 in the Central Court of Preliminary Investigation no. 3).

⁵⁰ Similar, Statement of the Mossos d'Esquadra 848286/17, appearing in folios 3,170 and seq. of Preliminary Inquiries 82/17, of the Central Court of Preliminary Investigation n. 3.

⁵¹ This was how Manuel Castellví del Peral (Head of the General Commissariat for Intelligence) put it to this investigating judge in his statement taken on 27 February 2018; it was confirmed by the General Technical Commissariat for Planning (Emili Quevedo Malo) and the General High Commissariat of the



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Executive Council that, although up to that point a tacit agreement of non-violence had prevailed, the large number of collectives that had mobilised on those dates (including 42 Committees for the Defence of the Referendum, students, firefighters, etc.) meant that they were expecting a departure from previous situations and a rise in violence, with significant outbreaks of confrontation, with the aim of preventing voting on 1 October. This was an indication of risk that had been technically evaluated and revealed by the Mossos d'Esquadra, beyond the fact that the Government representatives present at that meeting knew only too well of the risks of violence, as a result of the events that had occurred on 20 September outside the Department of the Treasury, and which will be referred to subsequently.

Despite this, the decision by the members of the Executive Council was that polling should go ahead.⁵²

Mossos (Juan Carlos Molinero Juncá), and the then Head of the High Commissariat (Ferran López Navarro), in their statement taken on 26 February 2018.

⁵² The responsibility of the three Executive Council members present at the meeting is essentially determined, as will be seen, by the decision to back the referendum to determine the declaration of independence, making use of or accepting the violence that would result from its being held, as was clear at that time; especially when it was felt that mass mobilisation was a necessary way for the Spanish State to accept the independence of Catalonia and it was known that large numbers of law and order forces had been deployed to prevent any unlawful activity.

This is the decisive factor to establish the responsibility of those who on 28 October refused to put an end to the unlawful process that was creating the risk of violence on the streets, irrespective of whether the police chiefs of the Mossos d'Esquadra (as the police force entrusted with the duties of public order in Catalonia) accepted or disregarded the court order to prevent polling stations from opening, the referendum from taking place and the votes from being counted.

In any case, the willingness of the Executive Council members present at that meeting to resort to or accept violence, would be clearer if it were established that they did in fact order the forces of law and order to act unlawfully, as they would then be supporting a rise in popular mobilisation and weakening the elements of containment or deterrence available according to the rule of law.

The police chiefs of the Mossos d'Esquadra have stated that they informed their political division of the risk of violent mobilisations, and have also stated that the Executive Council of the Generalidad replied that the referendum would go ahead regardless. At that crossroads for the Mossos d'Esquadra, they maintain that their decision was to ensure that the court decision was carried out and guarantee the closure of the polling stations.

Nevertheless, an analysis based on the rules of logic and human experience would lead to the conclusion that the political leaders must have given the Mossos d'Esquadra the order not to prevent polling and that the police chiefs, as a result of this demand, designed a plan of action that prevented a Mossos d'Esquadra officer from being able to enforce the court decision in any real or effective way.

The result is a series of elements, such as:

- a. The long and intensive effort by the Catalan Parliament and the Catalan Executive to bring about the process of independence, of which the 1 October referendum was an essential part,



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along with their complete lack of respect for the law and the decisions of the courts in this process, does not lead one to think that the leading figures in the Generalidad assumed that the regional police (who answer directly and organisationally to them) might impede their project.

Particularly when taking into account that:

- On 4 July, the then Minister for Industry, Jordi Baiget, had been replaced due to a loss of confidence by the president, Carles Puigdemont, as the minister had stated in an interview that it was irresponsible for a unilateral referendum to be held, and said that he feared the repercussions for him to form part of a unilateral approach (witness statement made to this investigating judge).
 - On 14 July 2017, the president of the Generalidad de Catalunya also replaced the Education Minister, Ms Meritxell Ruiz Isern, and the Minister for the Office of the President, Ms Neus Munté Fernández, specifically because they were both aware of the personal liabilities that could arise from unilateral action (witness statement from both former ministers to this investigating judge).
 - On that same day, 14 July 2017, the president of the Generalidad de Catalunya replaced the Interior Minister, Jordi Jané, without this investigating judge being able to discern a compelling reason other than that which led to the replacement of the two previous ministers, i.e. for also not giving solid support to the unilateral approach (witness statement).
 - As soon as Mr Jané was replaced by the Interior Minister Joaquim Forn, Mr Forn told the media that the role of the Mossos d'Esquadra was to facilitate polling, which led the Director General for the Interior, Albert Batlle, to resign (witness statement).
- b. On the other hand, the Interior Minister himself, who made the order for the referendum to continue at that meeting on 28 September, was the one who had to approve the Mossos d'Esquadra operation, as although a police operation may be technical by definition, it is subject to final approval by political decision-makers when dealing with major operations, as indicated by the former Director General of the Mossos in his statement.
- c. The new Interior Minister, Joaquim Forn, was one of the ministers who signed the Decree to call the referendum, who, together with the new Director General for the Interior that he appointed, made several public announcements that the Mossos d'Esquadra would allow or facilitate polling, and admitted having voted on 1 October despite the prohibition.
- d. The operational co-ordinator of all the police forces that were to be involved in the operation to prevent the referendum from taking place, i.e. the Mossos d'Esquadra, the Spanish National Police and the Civil Guard, stated that his role was not to determine the content of the action of each police force (which was done by their respective chiefs), but rather to organise and supervise the interaction of the forces from the different police groups.

As part of this job, he attended the co-ordination meeting held on 28 September at the Generalidad de Catalunya Palace. In his statement, he stated that, at that meeting, both the political representatives (the president of the Generalidad, the vice-president and the Interior Minister were in attendance) and the Mossos police chief placed the emphasis not on the decision by the judge (set out in the ruling issued on 27 September) to close the polling stations and prevent the referendum, but rather on the point made in one of the phrases of the legal grounds, specifically the point which spoke of ensuring that complying with the order would not adversely affect normal civic coexistence. He stated that what they all maintained is that the Mossos d'Esquadra would ensure that polling would go ahead without confrontation, and that State Security Forces would only act if requested to do so by the Mossos, and not by their own decision. He gave assurances that the representatives of the Generalidad argued that coexistence was the value deserving of most protection on that day, and concluded that, with the pretext of avoiding confrontations, they tried to justify the failure to comply with the court order as a failure by the police to act as polling went ahead.



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- e. Finally, there are significant elements confirming the design of a formal or apparent operation, i.e. one aimed at boycotting compliance with the court order through inaction.

He thus points out:

- That on the days leading up to the 1 October referendum, the Mossos d'Esquadra agreed to visit all the polling stations, in order to remove any material found there, and to order the persons in charge not to use them on the day of the vote.

When this task was carried out, the agents going to each polling station informed (revealed) that on 1 October a pair of police officers would visit each centre and would proceed to close them down, if they were not prevented from doing so by a crowd of people undermining public order. And they reported that they would check for compliance with the order at 6.00 am on the day of the referendum.

These plans of action were what led, through the use of digital platforms, to citizens being called on to occupy polling stations either the night before or from 5.00 am on 1 October.

- The Mossos d'Esquadra mobilised 7,000 officers, when for normal election days more than 12,000 officers are deployed.
- Officers were distributed by senior figures in the Mossos d'Esquadra (as its chiefs testified), and did so inefficiently, as they distributed the available agents not with any sense of being able to ensure that the main polling stations were closed down, but rather with the sense of guaranteeing at least two officers at the 2,259 polling stations in place.
- The plans of actions drawn up were entirely dilatory and tolerant of the poll. If once a patrol had verified that voting was taking place at a polling station it concluded that it lacked the capacity to carry out its orders, it was to report back to the Mossos d'Esquadra Regional Office. If the Regional Office could not provide a suitable response to the situation, it was to inform the Mossos d'Esquadra Regional Co-ordination Centre, which would send a mediation group to assess whether or not an agreement could be reached with those gathered at the polling station (it should be noted that on that date there were eight mediating agents in the whole of Catalonia, and they were acting in pairs). If the involvement of the mediation group did not solve the problem, the Regional Co-ordination Centre would assess whether it was appropriate to send reinforcements from the local police to wherever incidents were occurring. And if the situation was not resolved after the involvement of the local police, the Regional Co-ordination Centre was to be called again, which would in turn inform the Mossos d'Esquadra Main Co-ordination Centre, so that it could finally assess whether or not to request reinforcements from the State Security Forces.
- In his statement, the co-ordinator of all the police forces stated that at times the Mossos d'Esquadra asked for support at non-conflictive points, or that there were patrols of Mossos who were overseeing the movements of the State Security Forces and preventing them from reaching polling stations.
- The same witness stated (and supporting videos have been provided) that, at some polling stations it was the Mossos d'Esquadra officers themselves who confronted the Security Forces to prevent them from closing polling stations down. And he also stated that some polling stations closed at midday so that those officiating the vote could leave for lunch, without the Mossos d'Esquadra officers deployed there seizing any voting material or preventing it from opening again later on in the afternoon.
- The statements given by all the police forces show that whereas the National Police and the Civil Guard succeeded in closing down more than 200 polling stations on the morning of 1 October, the Mossos d'Esquadra forces did not close any on that morning, which is supported by witness statements that the stations that closed in the afternoon did so once



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31. Following the police co-ordination meeting on 28 September, on 29 September 2017, with the aim of guaranteeing the availability of polling stations committed to holding the referendum, the Education Minister, Clara Ponsatí, together with the Work and Social Affairs Minister, Dolors Bassa, proceeded in the same way as the Health Minister had done on 22 September, and assumed control and decision-making on the schools and civic centres controlled by their respective ministerial departments.

32. According to the assessment conducted so far, the public expenditure or a commitment to spending that was necessary for the referendum as called by the Executive Council members to be carried out, is as follows:⁵³

- a. Costs of the campaign to register Catalans abroad to cast their vote, amounting to €224,834.25.
- b. Costs of the referendum advertising and dissemination campaign, amounting to €277,804.36.
- c. Costs relating to the supply of voting slips, the electoral register, and the summons sent to polling station officials, by Unipost, amounting to €979,661.96.
- d. Involvement of international observers, amounting to €119,700.

Making a total of €1,602,001.57.

votes had been counted. Similarly, no material for the referendum was seized in the days leading up to 1 October.

- The action taken by the Mossos d'Esquadra as mentioned in his statement only serves, as a positive but completely ineffective measure, to identify hundreds of polling station officials. He also states that 24 polling stations were not opened on that morning because of the measures taken, without indicating any reason for their not opening, or the circumstances in which their eventual opening may have occurred.
- The statement given on 26 and 27 February by the police chiefs (Ferrán López Navarro and others) shows that no disciplinary proceedings have been initiated against any of the Mossos d'Esquadra who, in the 41 video documents provided by the Civil Guard, appear displaying behaviours that are incompatible with observing the court decision to close the polling stations, with witnesses stating that only certain information-gathering procedures were initiated.



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Action taken by the pro-sovereignty organisations Catalan National Assembly and Òmnium Cultural

As has already been stated, shortly after the content of the White Paper was drawn up within the 10th Legislature, specifically on 30 March 2015, the pro-sovereignty political parties extended the framework of action to other pro-sovereignty associations. To that end, a roadmap for the independence process was signed between the pro-sovereignty political parties, with the organisations Òmnium Cultural (represented by the late Muriel Casals Couturier), the Catalan National Assembly (represented by its then chairwoman Carme Forcadell i Lluís) and the Association of Municipalities for Independence (represented by its vice-chairman Jose Maria Foige i Rafel).

It should also be remembered that the pre-agreement included holding a plebiscite-style election on 27 September 2015, and that if the result was for independence (measured by electoral support for the pro-sovereignty parties), all the signatories agreed to undertake a process of national transition that would lead to the Catalan republic being declared within the following 18 months at the latest.

It has also been shown that on 12 April 2015, the pro-sovereignty Catalan National Assembly organisation drew up a document setting out its specific roadmap for 2015 to 2018, in which it described maintaining the unity in action by pro-sovereignty parties and organisations (fol. 4), along with the social pro-independence base as a whole, as strategic aims. And it has been noted that in that same document, the Catalan National Assembly (ANC) stated that, faced with the possibility of the Spanish State taking over the Generalidad de Cataluña or of a pro-sovereignty party being declared illegal, citizens would have to come forward as the political agent pushing the independence process forward.

In that context, the following facts should be noted:

33. After the elections held on 27 September 2015, which led to the constitution of the Parliament in its 11th Legislature, a new president of the Generalidad de Cataluña was

⁵³ Statement 2017-101743-0112 and fol. 132 et seq. statement 2018-101743-10 and appendices as referred to.



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appointed, Carles Puigdemont Casamajó, who had the support of the pro-sovereignty parliamentary groups Junts pel Sí and the CUP.

Because the objective of the legislature was to bring about the secession process initiated in the previous legislature within 18 months, and given that an agreement existed between pro-sovereignty parties and organisations to share the momentum and execution of the process, the chairmen of the ANC (Jordi Sánchez Pincanyol) and ÒMNIMUM (Jordi Cuixart i Navarro) took part in conversations aimed at securing the investiture agreement that led to the new president's appointment⁵⁴.

The various collectives, however, all played different roles. The pro-sovereignty political parties agreed to provide the political support which, from a position of parliamentary majority, allowed them to push through and enact the aforementioned legislation, despite its clear violation of the Constitution, as well as appointing a president of the Generalidad de Catalunya who was committed to forming an Executive Council which, in its position of having control over the fabric of autonomous administration and from a structural disobedience of the constitutional regime, would allow parliamentary mandates to be carried out.

In turn, pro-sovereignty civic associations assumed the responsibility of fostering greater social acceptance of secessionist initiatives, and of encouraging public belief that proclaiming the republic was perfectly feasible, and, finally, of seeking intensive citizen mobilisation that would lead to the State accepting independence for Catalonia, faced with the de facto proceedings that were deployed⁵⁵.

It is the White Paper itself which includes the strategy that has been applied, and which defines the division of roles as described. This strategy and these roles may not have been halted following application of article 155 of the Constitution, and they seem (with increasing clarity) to be latent and ready to be resumed once full autonomous control is regained, as the

⁵⁴ This was indicated in the statements given and is included in the diary seized from Josep María Jové during the search of his home by Barcelona Court of Preliminary Investigation no. 13, in preliminary investigation 118/2017.

⁵⁵ The pro-sovereignty organisations' role is taken from the function attributed by the White Paper to citizen support. This is one provision of the White Paper, which is confirmed not only as a result of how events unfolded but by the content of the Enfocats document seized from Josep María Jové, the



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White Paper itself (reproduced below) sets out that in the eventuality of the State not giving consent for independence, given that self-government cannot be suspended indefinitely, much less definitively, secession would be achieved by resuming permanent disobedience of the constitutional and legal framework, and by citizens remaining mobilised, which would eventually force the State to recognise the new republic.^{56 57 58}

34. In this way, there has been a constant stream of events and demonstrations instigated by pro-sovereignty organisations in recent years, all aimed at giving momentum to and mobilising the largest possible number of people.

Marked by hundreds of acts of national dissemination promoted all over Catalonia and by other interventions minutely detailed in the extensive journalistic evidence included in the police statements, the following instigations are worth noting:

- a) On Catalonia Day on 11 September 2015, organised by the ANC and ÒMNIMUM under the slogan “Via lliure a la República Catalana” (Free Way to the Catalan Republic), before several hundred thousand citizens, Jordi Sánchez said that “We have decided that we’re leaving. And we will do it as quickly as we can, with the legitimacy of the street and the mandate of the ballot box⁵⁹. Jordi Cuixart and the pro-sovereignty political leaders were all in attendance on stage.
- b) On Catalonia Day the following year, under the slogan “A punt” (“On the Verge”, in an undisputable reference to secessionist decisions), before almost 400,000 demonstrators that the same organisers assembled in Barcelona alone, the accused, Jordi Sánchez, stated a determination to hold a ballot in 2017 and,

accuracy of which is the subject of particular study and corroboration in statement 2018-101743-5 and which is also confirmed by the multiple public statements made by the chairs of the ANC and ÒMNIMUM.

⁵⁶ The Enfocats document, which has been analysed to study whether it coincides with the plans, also recognises the need for a growing collective mobilisation, depending on the State’s reaction.

⁵⁷ The diary seized from José María Jové (which has been proven to be accurate) also shows that consideration was given to making citizen movements a tool with which to force the State to accept the independence of Catalonia, and the need to co-ordinate those movements with the actions of the Mossos d’Esquadra.

⁵⁸ The Association of Municipalities for Independence has a legal report on the criminal scope of the actions, which considers the possible offences of rebellion and sedition. Appendix 3 of statement 2018-101743-5

⁵⁹ Statement 2017-101743-0112, fol. 82)



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together with Jordi Cuixart, made a call for pro-sovereignty unity and encouraged the president of the Parliament of Catalonia to show disobedience if the Constitutional Court sanctioned her for allowing the parliamentary vote that would pave the way for the unilateral referendum to be called⁶⁰.

- c) In another demonstration, on 13 November of the same year, instigated by the same organisations and which also featured the presence of the main pro-sovereignty political leaders, in a call for collective mobilisation that he made his own in subsequent instigations outside the High Court of Justice of Catalonia, Jordi Sánchez stirred up the crowd by warning that Catalonia would not remain indifferent to its elected representatives being issued arrest warrants or tried in court, adding that the moment of truth was coming. At the same time, Jordi Cuixart, who was with him at the speech, stated that permanent mobilisation had begun; and without any criticism from anybody on the rostrum, the chairwoman of the Association of Municipalities for Independence, Neus Lloveras, called on secessionist Catalans not to give up against the dirty tricks of the State, because the end of that process should culminate in making the people stronger.⁶¹
- d) In the procedure implemented at the High Court of Justice of Catalonia for the referendum of 9 November 2015, the three pro-sovereignty organisations, the ANC, ÒMNIUM and the AMI, announced demonstrations against the court's actions that were to commence on 6 February 2017. They wanted participants to enter their names on a register and in their call to do so stated that citizens had the chance to show that they were willing to make personal sacrifices to stand alongside the president and the other individuals accused, adding that the festive demonstrations were now over⁶².
- e) With the same instigators involved, on the same day on which the court proceedings were to begin, a demonstration gathered outside the High Court, issuing calls for the public to mobilise and heaping scorn on Spanish justice.

⁶⁰ Statement 2017-101743-0112, fol. 83 and Appendix 3 of extended statement 2018-101743-6

⁶¹ Statement 2017-101743-0112

⁶² Statement 2017-101743-0112 and extended statement 2018-101743-6



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- f) On 11 June 2017, a new demonstration gathered, at which a manifesto was read out in favour of the participation and mobilisation of all those in favour of independence. Jordi Cuixart stated that pro-independence organisations were formed to ensure that the referendum that was to be held would be binding, because it would have consequences the day after it was held. Jordi Sánchez told the Spanish Government that the only way to prevent the referendum was through the use of improper acts, as the will of the people was to keep going and not turn back. And Neus recognised and accepted that the path of dialogue with the State had been exhausted and
- g) on Catalonia Day on 11 September 2017, which took place straight after the Referendum Act was approved and suspended, a demonstration was organised by these organisations under the slogan “Referèndum és democràcia” (Referendum is Democracy), in which the president of the Generalidad, most ministers and the president of the Parliament, Carme Forcadell, all took part. In the public speeches, Jordi Sánchez stirred up the crowd by stating that the streets had been reclaimed once more, and thanked the politicians who had not failed them regarding the Referendum Act and the Disconnection Act, proclaiming that they owed obedience solely to the Catalan Government.

35. In this strategy of growing mobilisation, on 20 September 2017, the accused individuals, Jordi Sánchez and Jordi Cuixart, called on the people to gather outside the Department of the Vice-President and the Treasury of the Generalidad de Catalunya, located at no. 19-21 on La Rambla de Catalunya in Barcelona. The reason was that the officers of the Civil Guard of Barcelona acting under the orders of Barcelona Court of Preliminary Investigation no. 13 had made a series of arrests and had started to implement the court decision to search Department facilities, looking for elements and data to determine responsibilities resulting from having called the referendum scheduled for 1 October, so as to prevent it from going ahead⁶³

⁶⁴ .

⁶³ Statements given by the accused.

⁶⁴ folio 88 et seq. of Volume 1 of the actions originating from Central Court of Preliminary Investigation no. 3, in preliminary investigation 82/17, and in statement 2017/101743/0095 on folio 548.



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The calls for demonstrations not only announced that there was a Civil Guard action occurring aimed at preventing the referendum, but also revealed the place where the search was taking place, urged citizens to defend Catalan institutions, demanded that the Civil Guard free those who had been arrested, and called on Catalans to mobilise, urging them on by saying that together they could not be defeated, or that the forces of law and order had got it wrong and had declared war on those who wanted to vote.

From that incendiary gathering, what happened was a long way from being the peaceful action that was being formally claimed in some messages.

36. Despite the fact that the Civil Guard officers had reached the Department building at around 8.00 am on 20 September 2017, officers of the Mossos d'Esquadra Mediation Service describe⁶⁵ how there was already a huge crowd there when they arrived at around 10.30 am that morning, and that these demonstrators had overpowered the officers of the court.

Under the sole protection of the two Mossos d'Esquadra officers in charge of supervising ordinary access to the building every day, who received no reinforcements during the day, events developed under a siege of up to 60,000 demonstrators, who thronged together right up to the building's main entrance. The security perimeter that the officers of the court called for was not established, and to move through the thousands of demonstrators there was no other way than through a narrow human corridor that only allowed them to move in single file.

The mobilisation prevented the Civil Guard from gaining entry into the building with those arrested (who according to the Criminal Procedure Act should be present at the police examination) or complying with the court order as normal, as well as preventing the officers of the building from going in or out for the several hours that the incidents lasted. The crowd surrounded the Civil Guard vehicles, which ended up damaged and destroyed, inside and out. The weapons inside the police cars were left to the fate of the vandalism carried out. The throwing of objects at officers happened quickly, and there was no police control to prevent the crowd from invading the building at any moment, nor was it safe for the officers of the court to

⁶⁵ Statements given on 26 and 27 February 2017.



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leave the building in those conditions. It was only around midnight that a way could be devised to allow the attorney of the Court of Preliminary Investigation on duty to leave the place safely, which had to be done by having her blend into the crowd leaving the theatre in the adjacent building, the only access to which was via the roof of the two buildings. However, the other Civil Guard officers had to leave when the demonstration had dissolved, doing so specifically in two shifts, one at 4.00 am on 21 September, and the other at 7.00 am that same morning.

And during these disturbances, the two men accused, Jordi Sánchez and Jordi Cuixart, exerted the following control:

- a) From the early hours of the morning, Mr Sánchez had established himself as the interlocutor for the demonstration with the acting police officers, to the extent that at 9.39 am on 20 September, Jordi Sánchez addressed the crowd for the first time, at the entrance to the Department of the Vice-President.⁶⁶
- b) It was members of the pro-sovereignty organisation Catalan National Assembly (ANC) who, by identifying themselves as such, which was respected, kept the access corridors open through the crowd.
- c) It was members of the ANC who took charge of distributing food and drink among the crowds;
- d) It was Mr Sánchez who refused to allow the Civil Guard officers to get the individuals who had been arrested into the building, unless the officers of the court agreed to accompany them on foot through the crowd.
- e) Mr Sánchez refused to allow the Civil Guard officers to take control of the police vehicles unless they went to where they were parked on foot;
- f) once Mr Cuixart arrived at the scene, both chairmen addressed the crowd on several occasions to direct proceedings:

⁶⁶ Video 1, appendix 2, report submitted with preliminary inquiry 82/17, from inquiry by Central Court of Preliminary Investigation no. 3, 30 November 2017.



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- i. On the afternoon of 20 September⁶⁷, Jordi Cuixart addressed the crowd and demanded the release of all those who had been arrested. Despite claiming that the demonstration was peaceful in nature, he also called on the resolve shown during the Spanish Civil War (“They shall not pass!”) and challenged the State to try to seize the material prepared for the referendum, which they had hidden in certain locations. And Jordi Cuixart finished his speech by saying that today there are tens of thousands of us here; tomorrow there will be hundreds of thousands of us, wherever we are needed; if we remain united from a position of diversity, be in no doubt that we will win our freedom.

After this speech, Jordi Sánchez spoke, thanking the crowd for having trusted in the pro-sovereignty organisations. He said that these organisations had promised to go out onto the streets to defend institutions when necessary, and here they were. He proclaimed that this was that day, and that the moment had come to go out onto the streets to defend their dignity, institutions and referendum, and that neither Rajoy, the Constitutional Court or all of the State Security Forces could stop them. And he stated that not long previously, he had met with Carles Puigdemont and the president had assured him that there would be a referendum.

He finished by asking for nobody to go home yet, as they had a long, hard night ahead of them, and there was work to be done, because they represented the dream of a new country.

- ii. At around 11.41 pm⁶⁸, standing on one of the Civil Guard’s official cars, Jordi Sánchez and Jordi Cuixart addressed the crowd again:

Jordi Cuixart stated that he spoke on behalf of the pro-sovereignty organisations, and the PDeCat, ERC and the CUP-CC. He proclaimed that they were all gathered to fight for their freedom and said that from that altar

⁶⁷ Video 3, appendix 2, report submitted with preliminary inquiry 82/17, from inquiry by Central Court of Preliminary Investigation no. 3, 30 November 2017.

⁶⁸ Video 4, 4-1, appendix 2, report submitted with preliminary inquiry 82/17, from Central Court of Preliminary Investigation no. 3, 30 November 2017.



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(clearly referring to the vandalised police vehicle), Jordi Sánchez and he wanted to call on all those present to form a permanent mobilisation to defend those who had been arrested, urging them to take part in a demonstration at 12.00 AM on the following day, next to the High Court of Justice of Catalonia.

Jordi Sánchez spoke rousingly again, saying that neither the Constitutional Court, Rajoy, the Civil Guard, nor anyone else would succeed in stopping them, and after requesting the crowd to disperse for that day, asked them to attend the demonstration on the following day outside the High Court.

- iii. Jordi Sánchez and Jordi Cuixart gave similar messages throughout the day, through media interviews⁶⁹.

37. Knowing this violent uprising, assuming that it could be repeated in future mobilisations⁷⁰, and knowing that actions of this kind were unavoidable to bring about a referendum forbidden by the courts⁷¹ and which the declaration of independence depended on according to the provisions of Act 19/2017, as the vote involved overcoming the intervention of the Mossos d'Esquadra and six thousand State Security officers that had been deployed to guarantee the closure of the 2,259 polling stations, Jordi Sánchez and Jordi Cuixart made the most of their obvious skill for collective mobilisation and, with the aim of bringing about the independence they hoped for, urged all Catalans to go to the different polling stations on 1 October and prevent the police forces from carrying out their mission.

⁶⁹ There is evidence of everything stated here in the documentation incorporated into statements 2017-00101743-90, 2017-101743-0095 and 2017-101743-00000112, as well as the witness statements given by the acting Mossos d'Esquadra officers.

⁷⁰ The push for and instigation of dozens of mobilisations of varying intensity on the days leading up to the 1 October vote is documented, 2018-101743-012, as well as for two general strikes, mobilisations, escrache-type protests and public order incidents in the days following the government intervention.

⁷¹ As an example of conclusive evidence, page 100, call 4, statement 2018-101743-5 includes a telephone call in which Joan Manel Gómez, who had been arrested for his involvement in the events of 20 September, states to his interviewer that they had been received at the Generalidad Palace by the president, the vice-president and certain ministers, who had thanked him for his work. And another call, no. 5 on the same folio, which shows that Francesc Sutrias Grau, director of heritage of the Public Tax Administration of the Generalidad, arrested as part of the searches carried out on the 20th, states to his interviewer that the disturbances on 20 September had prevented the Civil Guard from acting, and which exemplifies the decision made to maintain the tension through to 1 October.



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Notwithstanding the fact that they had also done so through their permanent presence in the media, the two accused individuals mobilised citizens to go out and vote en masse, using a range of messages published on Twitter accounts that were followed by thousands of people. In them, they urged citizens to occupy polling stations before the time at which law and order officers were ordered to intervene, and to resist their police work, also encouraging them to protect the counting of votes from any measures that might be taken by the State Security Forces⁷².

As a consequence of this mobilisation, a significant number of citizens confronted the actions of the police, which, as well as the injuries suffered by several citizens through the use of force by the police, led to numerous acts of violence that injured several officers or caused damage to items used by them⁷³. Specifically, with regard to Civil Guard officers, this includes:

- A crowd of around 350 people, who blocked access to the polling station at calle Empordá no. 7 in Sant Andreu de la Barca (Barcelona), leading to the assault of the officers who intervened.
- A crowd of around 300 people who protested against the action taken by the police deployed at the paseo Anselm Clavé no. 8 in Callús (Barcelona), resulting in officer U30527P receiving an injury in the testicular area.
- A crowd of around 150 people who clashed with the officers sent to the polling station at calle Miquel Martí i Pol, in Sant Cebrià de Vallalta (Barcelona), resulting in five local police officers being injured (TIP Z44192J, L97409L, B17279W, P24860N and C70834I).
- Around 100 people more clashed with officers who were sent to the polling station at calle Escoles no. 2, in Sant Iscle de Vallalta (Barcelona), where police officer TIP L30567B was injured.

⁷² folio 746 et seq. of the actions originating from Central Court of Preliminary Investigation no. 3.

⁷³ Folios 84 to 132 of statement 2018-101743-012 identify officers who were in charge of the affected operations and the officers injured, in order for their witness statement to be taken, if deemed necessary. The appendices include the documentary accreditation.



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- 200 more people were involved in a confrontation, which included pushing, kicking and spitting, with officers deployed at the polling station set up on the Avenida de Montserrat in Castellgalí (Barcelona).
- A crowd of around 300 people prevented officers from accessing the polling station at calle Constitución no. 37 de Sant Andreu de la Barca (Barcelona), with the police officers being attacked with kicks, punches and a volley of insults.
- Up to 200 people gathered to oppose the police intervention at the polling station at calle Mayor no. 47 in Dosrius (Barcelona), leading to four Civil Guard officers suffering bruises (TIP R12810S, G20480Y, V11483E and Z66018U).
- Fifty people clashed with officers who were sent to the polling station on the calle de la Iglesia in Fonollosa (Barcelona), leading to injuries to officer TIP K62747Z from being kicked.
- More than 700 people confronted officers at the polling station in Sant Joan de Vilatorrada (Barcelona). One of them was attacked with a chair (TIP T21380R).
- Up to 150 people gathered at the polling station on the calle Salvador Dalí, in the municipality of Dosrius (Barcelona). Four agents were injured as a result (TIP U93494I, Q26078Q, I50070J and B0404Y).
- Up to 200 people gathered in a confrontation with officers who took action on Avenida de Montserrat, in the municipality of Sant Esteve de Sesrovires (Barcelona). One of the agents was kicked in the back of the head (TIP Y30747J), with a total of ten Civil Guard officers injured.
- A crowd also tried to prevent the actions of officers on the Avenida Alfacs in Sant Carles de la Rápita (Tarragona). One of them (officer TIP B98467N) was hit in the right eye by a projectile. In this incident, damage was caused to vehicles and police material worth €17,242, as a consequence of stones thrown, punches and kicks.



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- The demonstration by around 150 people led to a fracture of the phalanx bone in the finger of one of the officers (TIP G55461W) on duty on calle Manuel de Castellví, in the municipality of Vilabella (Tarragona).
- Around 500 people clashed with police on the calle Val de Zafán in Roquetas (Tarragona). This eventually resulted in the officers involved being hounded by the crowd.
- Up to 300 people gathered in a confrontation with officers sent to calle Arenes no. 5 in Mont-Roig del Camp (Tarragona), where three Civil Guard officers were injured from shoving and kicking (TIPs I57753N, V71878W and W79506I).
- Civil Guard officer V17236Ñ was injured in the forehead by a set of keys, with officers K12407U and X33145Q also injured, as a result of confrontations with around 50 individuals at the polling station on the calle Gran no. 26 in Garrigas (Girona).
- A similar group assaulted officers TIP Q20556R and U83881V on calle de las Torres 1 in La Tallada l'Empordá (Girona).

With regard to National Police officers who were deployed to prevent the referendum deemed null and void by the Constitutional Court from taking place, the crowds of citizens who gathered led to the following assaults:

- Eighteen public employees injured in the city of Barcelona, specifically:
 - Officer no. 74,881, at the polling station set up on the calle Jaume Balmes.
 - Officers 70,231 and 88,428, at the Mediterranean School.
 - Officers 86,846 and 100,445 at Estel primary school.
 - Officers 92,552 and 106,424 at Joan Fuster secondary school.



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- Officers 96,181, 115,789, 96,815, 103,406, 102,912 and 117,892 at the Ramón Llull infant and primary school.
- Officer 120,381 at the secondary school on calle Pau Claris.
- Officers 103,852, 86,496, 102,476, and 69,924 at the polling station on calle Escolas Pias Sant Antoni.
- Eleven officers in the city of Tarragona, specifically:
 - Officer 82,279, at the polling station at Campciar civic centre.
 - Officers 56,742, 93,493, 83,553 and 92,600 at Torreforta secondary school.
 - Officers 100,775 and 99,874 at Comte Rius secondary school, and
 - Officers 97,881, 90,079, 74,151 and 101,667 at Tarragona secondary school.
- Nine officers in the city of Girona, specifically:
 - Officers 66,175, 87,487, 95,458, 99,594, 93,294 and 75,085 at Verd infant and primary school.
 - Officer 105,265 at Dalmau Carles infant and primary school, and
 - Officers 109,541 and 120,953, on a public highway.
- Finally, 20 public employees were injured in the city of Lleida, specifically:
 - Officers 87,688, 94,670, and 76,753 at the polling station set up at the Official Language School.
 - Officers 70,101, 76,766, 99,306, 110,120, 110,336, 71,004, 72,862, 87,576, 102,764 and 113,391 at the CAP Cappont.



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- Officer 77,795 at the Caparella
- Officers 107,387, 94,601, 113,391, 81,119, and 101,381 at Juan Carlos adult training centre, and
- As a consequence of the stone thrown at him, officer 118,664, at a demonstration that took place close to the CNP Provincial Office on Avenida Prat de la Riba no. 36.

A possible unlawful activity in progress, with a change of participants:

38. The intentional nature of the riots is also clear in the numerous mobilisations which, after 1 October, continued to call for recognition of the Catalan republic. This coincides with proclamations (increasingly frequent and explicit) that do not project the democratic defence of a political aspiration, but instead reflect the desire to satisfy the yearnings for independence at any cost, and, fundamentally, by persisting in the criminal behaviours brought to trial.

Therefore, this process deals with an attack on the Constitutional State which, with the desire to impose a change in the form of government for Catalonia and for the rest of the country, involving a seriousness and persistence that is rare and unparalleled in any neighbouring democracy, and all the more so for having made use of the political and governmental power granted by the Constitution itself, specifically to guarantee the rights of all citizens of this autonomous community and the country.

It is an attack that can be in progress no matter how hidden it may occasionally be and that may hope to exploit a change in its protagonists, as that is precisely what was designed in the White Paper, which in all other particulars has been followed in detail.

As a kind of Rosetta stone of the criminal design as described and its persistence, the White Paper stated:

“1.3.2 Non-Collaboration Scenario:



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[...] The State has legal instruments so that via the Constitutional Court it can challenge the actions of the Generalidad aimed at creating State structures that exceed the current framework of competencies, as well as any other acts adopted by Catalan institutions within this process and which the State considers to be in breach of the Constitution. If they come from the State Government, these challenges entail the automatic suspensions of the contested acts for a maximum reviewable period of five months. The State, furthermore, has at its disposal the instrument of article 155 of the Spanish Constitution, to order the president of the Generalidad, and in the event of said order being ignored, to call on the Senate to authorise by absolute majority the State Government to take “the necessary measures to force it (the Autonomous Community) to comply” with the legal or constitutional obligations that it deems to have been breached or to protect the general interest that it considers to have been infringed. There are sectors which in this regard have maintained that these measures could include the intervention of some institutions and/or services of the Generalidad, and even suspension of autonomous control. And, in the event of an extreme reaction, it should not be ruled out that the State can, possibly coinciding with some of the measures indicated already, resort to any of the exceptional statuses set out in article 116 of the Constitution”.

And faced with that State action, which has already occurred insofar as the Constitutional Court suspended the parliamentary decisions that were challenged and the Senate authorised the intervention of the institutions of the Generalidad, the White Paper continues to develop what the secessionist strategy should be in that situation:

“Limits of the State’s opposition:

The possibility of the State’s opposition does, however, have limits, both in what it does to the means available, and to its probable effectiveness in the medium term. The State, in effect, could not adopt measures that mean a limitation, and much less a suspension or a suppression, of people’s rights and freedoms, beyond the provisions of articles 55 and 116 of the Spanish Constitution. If this were the case, even the European Union could intervene, through the mechanisms set out in article 7 of the Treaty on European Union, aimed at ensuring that the States comply with the values on which the Union is based, which enable it to react to situations where there is a risk of a serious breach or of serious and permanent breaches of these fundamental values by the Member States, and which entail placing the



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State in question under observation and the possible imposition of sanctions. On the other hand, forced state intervention can lead to problems that are highly difficult and complex in their application, which would grow in direct proportion to their scope and their duration and which could notably compromise their efficacy. And it should also be pointed out that it would be very difficult to stifle public will and prevent demonstrations in the future. Even in the extreme case of self-government being suspended, it cannot be suspended indefinitely, much less definitively, and therefore the popular will and institutional will could continue to protest once autonomous control and the ordinary functioning of institutions has been recovered”.

This account of the strategy we are undergoing comes to an end by stating, immediately after:

“On the other hand, as regards the possibilities open to the Generalidad, once the State has issued its refusal, with the ensuing political impasse, the Generalidad could try to force negotiations with the State, turning to various actors (particularly from abroad, but also from civic society) to act as mediators with the State. The support from the mobilised part of civic society could also constitute a decisive factor for this goal”.

FUNDAMENTAL POINTS OF LAW

ONE.- 1. The facts described above are liable to constitute an offence of rebellion as per article 472.5, 7 and related provisions of the Criminal Code.

Within the “Crimes against the Constitution”, the stated precept entails a conviction for the offence of rebellion to those who “violently and publicly rise up to [among other aims] declare the independence of any part of the national territory or to disaffect from obedience to the Government any armed force”.

The offence of rebellion seeks to preserve the essential principles of democratic coexistence, with regard to attacks that may deeply injure the basic structural elements of our political organisation, such as: the validity of the rules governing the legal system as stated in the constitution; the democratic and electoral exercise of the sovereignty of the Spanish people; the normal conduct of government of the Nation or the Autonomous Communities with regard



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to the functioning of the institution of the monarchy or the legislative or executive power; the defence of a structure of defence fully subject to the Rule of Law, by sanctioning whoever disaffects any armed force from obedience to the Government; or the integrity and indivisibility of the national territory, proclaimed in article 2 of the Spanish Constitution.

As a rule, the significance of the legally protected right justifies prioritising its protection, constituting an offence merely of activity, the committing of which does not require the result sought by the perpetrator, i.e. to successfully achieve or declare independence of the territory corresponding in this case to the Autonomous Community of Catalonia, but rather its material content is satisfied simply by carrying out the behaviour consisting of rising up publicly and violently, provided that the behaviour is used to achieve the result sought and that this result is considered a criminal offence.

2. By including the adverb that modifies the action (violently) in the description of the offence, our legislator avoids incorporating the suggested noun into the offence. Someone who acts in a violent way does so violently, which does not indicate a typical content that fully equates to acting with violence.

The case law of this Court characterises violence by its physical nature, by its personal manifestation and by its appropriateness. The physical nature implies that the use of violence requires the use of force for a current and present harm, in clear contrast to intimidation or the use of psychological pressure through the suggestion of power in order for potential harm to be produced. Its personal or subjective manifestation presupposes that in the violence the recipient of that force is a person, even though material things can also be possible recipients of physical force. Finally, appropriateness or adequacy is required, based on the force having sufficient intensity to be able to overcome the will of to whom it is aimed, and thus have the capacity to harm the legal right being protected. However, with regard to acting violently, even when the violent act means the use of a force and physical impetus that is incompatible with psychological force, it lacks the subjective element inherent to violence, with the violent act able to be projected onto material things.

In any event, the facts that have been described to have occurred on 20 September 2017 outside the Department of the Treasury meet all the requirements that have been



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identified for a violent act, and also for violence. It has been described that a crowd of 60,000 people gathered who were opposed to the presence and actions of the police forces, and the facts that occurred there show that the crowd acted as a mass of force which, as well as destroying police vehicles, attacked personal property by throwing objects, and prevented those attacked from exercising their right of freedom to act and circulate for the many hours that the siege lasted. In no way could it be interpreted that the barrier formed had an exclusively intimidating nature, as if intimidation means an infringement of the individual's decision-making capacity, the facts set out here determined the inherent effect of the violence, i.e. an actual restriction of the capacity to act as a consequence of the use of force, as would occur in the taking of hostages by firing shots into the air.

On the other hand, the facts of 20 September 2017 are assessed in this ruling not strictly by their content, but rather by whether they can show that there was a risk of future mobilisations leading to violence designed to achieve independence. And it is clear that what occurred on 20 September, although not a reflection of the violence that was conceived at the start as a tool for achieving independence (which is not excluded from this ruling), certainly enabled all those involved in the process to represent the risk that future mobilisations could break out into episodes of major detriment and damage in the social group. After years supporting the collective desire for independence among large sector of the population, after having tried out mass mobilisations made up of hundreds of thousands of adherents; after having convinced followers who claimed legitimacy for an independence that they knew was constitutionally impossible; and knowing the serious events that resulted from the public mobilisation in September; calling on all of them to oppose the widespread deployment of State Security Forces, who had been given the order by the court to prevent voting from taking place on 1 October, and to defend the vote count, implies not just acceptance of the risk of clearly representable violence, but also calling directly on a crowd to overpower by force any attempt at containment that might originate from the State, as finally occurred on the day of the vote.

TWO.- The offence of rebellion is a tendentious offence that involves multiple persons or a multiple intervention, in essence making it an offence according to the division of tasks among the various participants. And the carrying out of partial but relevant and essential contributions



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constitutes a functional control of the fact, which entails liability when accompanied by the intellectual and intentional content of the offence.

It is clear that the strategy's meticulous design to impose independence on the territory means that the main individuals responsible for these facts must have supported the possibility that the process would end up resorting to the instrumental use of force. This is consistent with the fact that the public mobilisation was already included in the White Paper and in the first pro-sovereignty agreements as an instrument, and it is also consistent with the incessant promotion of mobilisations, which has remained constant in recent years despite all of the groups involved in the process having new leaders, i.e. despite the fact that those who began the push for secession in the Parliament, the Executive Council and the pro-sovereignty organisations over two legislatures have all been replaced. Even more so if this was the only mechanism that was used to overcome an opposition from the State that was unavoidable in accordance with the legal system.

In any event, and even when it is understood that what is included in the investigation does not provide watertight justification of that initial intent, the account of events that has been given shows that those who made the main contributions to the core fact following 20 September clearly supported the violent fanaticism of many of their followers being triggered. And the persistence in their criminal determination with this knowledge is an example of their willingness to include the use of force in the mechanism to secure a secession, which they did not wish to give up on. It was decided to utilise the power of the masses in order to oppose a police action that was known to be aimed at preventing the referendum, so that the vote could go ahead, enabling and abetting not only that the results of the referendum permitted independence to be proclaimed, as provided for in Act 20/2017, but also for the Rule of Law to yield to the violent intention of a part of the population that was threatening to grow. In this way, the offence being analysed is fully applicable to those who, knowing the unavoidable social disruption inherent to the facts that occurred, incorporated it into their criminal action and persisted in the essential acts of incitement that led to the unlawful behaviour that they deployed.

This is clearly appreciable in the president of the Generalidad de Catalunya, Carles Puigdemont i Casamajó, the vice-president Oriol Junqueras i Vies, and Joaquim Forn i



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Chiariello. In the police co-ordination meeting on 28 September, the three were informed by the Mossos d'Esquadra chiefs that the Catalan police force evaluated the risk of violent incidents from a particularly mobilised section of the population as serious. They were also aware of how serious the protest outside the Department of the Treasury became, and were aware of the court's decision to prevent the vote from taking place, which furthermore was guaranteed with the significant deployment of six thousand officers of the law who had been mobilised from other parts of the country. Despite this, having the capacity to decide on a referendum that they themselves had called, and the capacity to provide the mechanisms of police security that could help contain the violence, they preferred to order the process to continue, to call on the population to mobilise and take part, and to push forward the planned operation by the Mossos d'Esquadra aimed at ensuring that demonstrations in favour of the illegal vote could successfully clash with the State police force.

The involvement of Jordi Sánchez Pincanyol and Jordi Cuixart Navarro can be attributed in a similar way. With the ability to mobilise hundreds of thousands of followers from the pro-sovereignty organisations, from their speeches in the media and multiple messages on digital platforms with thousands of followers, they encouraged a massed force to clash with the police charged with preventing the vote, removing election material, and seizing the votes counted on 1 October.

There is also a group among the accused whose contribution (in all cases after 20 September) consisted in ensuring that the vote would go ahead, aware of the efforts that others were making to ensure that the popular mobilisation would protect its progress. Their involvement therefore came with full knowledge of the circumstances of the action and was directly aimed at achieving independence, given that, as has been said, the vote that they were calling for was not only an element that was driving the popular reaction used against the Spanish Government, but was also the key to proclaiming independence in the terms set out in Acts 19/2017 and 20/2017.

Marta Rovira i Vergés, whose involvement was essential throughout the process, not just in planning the action mechanisms, but also in driving supporting legislation through Parliament and in the political operation to co-ordinate efforts from many different sectors of the administration; in terms of organising the referendum, she had an overall responsibility to



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ensure the polling stations were operational on 1 October, as reflected in the telephone conversations submitted.

As well as instigating the mobilisation from his role as spokesperson for the Executive Council of the Generalidad, as Minister for the Office of the President of the Generalidad, Jordi Turull i Negre managed and planned the referendum advertising campaign, as well as co-ordinating the IT infrastructures necessary for the referendum to be held, both as regards the distribution of forms of voting and the recruitment of thousands of volunteers who would act as polling officers or in registering Catalans from outside of Catalonia to vote.

As well as promoting the creation of State structures and trying to help achieve recognition of the Catalan Republic abroad through Diplocat, Raül Romeva i Rueda undertook a project to enable online electronic voting for people living abroad that was eventually abandoned. However in this same time-frame he worked to secure the presence of various international observers to give the referendum legitimacy. Carme Forcadell i Lluís was also involved in this mission. She played a central role from the beginning of the independence process as chairwoman of the Catalan National Assembly (ANC). She then took on the role of President of the Parliament, submitting to a vote of its members the decision to approve legislation that would be used as a legitimising cover to the process, in violation of the repeated prohibitions and rulings by the Constitutional Court to do so. In any case, her involvement has gone hand in hand with the violence shown in the latter stages of the case. She attended the demonstration on 20 September. Aware of its consequences, she harangued the crowd and urged it to mobilise the next day outside the High Court of Justice of Catalonia, as she did subsequently in various public statements. She welcomed international observers who went to Catalonia in the days and hours prior to the vote, to try to strengthen the vote's image of legitimacy, and finally placed the Parliament at the service of the referendum result, the proclamation of the republic, and all its violent consequences.

Antoni Comín i Oliveres (Minister of Health of the Generalidad) and Dolors Bassa i Coll (Minister of Labour, Social Affairs and Families), with the same knowledge as the above individuals, they took control of all the premises controlled by their ministries to guarantee their availability for the referendum and ensure its success. The former did so on 22 September, and the Minister of Social Affairs on 29 September. In addition, both allowed their departments



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to be used to partially meet the cost of printing the voting slips, as well as preparing the electoral register and the constituent procedures required for the polling stations.

Similarly, on 29 September 2017 Clara Ponsatí i Obiols (Minister of Education of the Generalidad de Catalunya) assumed control of all schools within her department, and took steps for them to be occupied, to ensure they could be used in the vote.

Finally, the contribution on these dates by Josep Rull i Andreu, Minister of Planning and Sustainability of the Generalidad de Catalunya, was noted. His contribution to the process has been significant since 30 March 2015, when he signed the independence agreement with the pro-sovereignty organisations, representing Convergència Democràtica de Catalunya, and he has taken part in many meetings to define the strategy for independence. In any event, following his involvement in the call for the referendum, he prevented a ferry scheduled to accommodate a large number of members of the State Security Forces sent to Catalonia from mooring at the Palamós port, thereby seeking to help the referendum go ahead and ensure that popular forces had as much leverage as possible in order to defy the will of the State.

THREE.- The facts are also liable to constitute an offence of disobedience as per article 410 of the Criminal Code.

The offence sanctions public authorities or public employees who openly refuse to comply with court decisions issued within the scope of their respective competency and invested with the appropriate legal authority. And although the case law of this Court has stated that not all failures to comply with a court decision constitute an offence of disobedience, they can be affirmed to satisfy the definition of unlawful in all those circumstances in which the offender's attitude shows reluctance to observe the court decision, regardless of whether the refusal is plain and explicit, or is expressed through obstinate negative behaviour.

As no agreement to incite violence has been upheld concerning them, the accused individuals Lluís María Corominas i Díaz (First Vice-Chair of the Bureau of Parliament of Catalonia between 22 October 2015 and 25 July 2017); Lluís Guinó i Subirós (who replaced him in said role from that date); Anna Isabel Simó i Castelló (First Secretary of the Bureau); Ramona Barrufet i Santacana (Fourth Secretary) and Joan Josep Nuet i Pujals (Third



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Secretary), may be indicted for the offence of disobedience. Their vote in favour of the Bureau of Parliament allowed the submission of the draft bills, which as with the 11th Legislature were identified in the previous account, along with their favourable position towards the admission of resolutions also described herein for a vote in the Plenary Session, constituted a strong and persistent disregard of the requirements beholden to them on several occasions by the Constitutional Court to prevent or halt any initiative that entailed ignoring or avoiding the voiding of parliamentary rulings that declared the citizens of Catalonia as a sovereign people and fostered a process for the creation of a Catalan republic and the drawing up of a Catalan Constitution.

A disregard of the requirements made by the Constitutional Court, on this occasion resulting in all members of the Executive Council of the Generalidad approving the passage of Decree 139/2017, calling the referendum, shows the potential liability of Meritxell Borràs i Solé (Minister of Governance, Public Administrations and Housing), Lluís Puig i Gordi (Minister of Culture), Carles Mundó i Blanch (Minister of Justice), Meritxell Serret i Aleu (Minister of Agriculture, Livestock, Fisheries and Food) and Santiago Vila i Vicente (Minister of Enterprise and Learning), as perpetrators of the offence under consideration.

With regard to Mireia Arán Boya Busquet (chairwoman of the parliamentary group of the Candidatura d'Unitat Popular-Crida Constituent) and Anna Gabriel Sabaté (parliamentary spokesperson for the same group), they may be guilty of the same offence. There is no evidence that they were notified or required to observe the orders of the Constitutional Court considered here; however, this Court has already pointed out that when the orders are contained in a court decision or in a decision or order by the higher authority, and they are directed not at an individual but at a public authority or public employee, what is truly decisive is that the recipient is aware of its existence and, above all, of the incumbent duty of compliance. And it is clear that the unconstitutional nature of the process has been in the public domain for several years, with certain previous convictions having been received for this same offence. In such a circumstance, in which the individuals accused are aware of a legal situation relating particularly to the political activity that they led in the Parliament, the submission of the Draft Bill of national transition and foundation of the republic, registered in the Parliament by Mireia Arán Boya on 28 August 2017 (as well as by Lluís M. Corominas i Díaz, who at the time was the Junts pel Sí Parliamentary Group chairman), may entail the



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same disregard towards the decisions of the Constitutional Court referred to previously. The Draft Bill of the self-determination referendum, brought by Anna Gabriel on 6 September 2017, may constitute the same offence.

FOUR.- Finally, the facts may also be liable to constitute an offence of misappropriation of public funds, as per article 432 of the Criminal Code, with regard to article 252 of said legal text.

The offence protects the property of the Administration and the trust of society in the honest handling of public funds, and their correct application to the collective services for which they are provided. It is these duties of fidelity, honesty and rectitude, which lead to the constitution of a criminal sanction that applies to the circumstances in which legally granted powers of administration of assets are misused in order to intentionally misdirect funds for inappropriate use, to the detriment of the public purse.

Such a situation may have occurred in the case analysed, given the relevant disposition of public funds, which was not driven by objectives inherent to the competencies entrusted to the autonomous administration and which justify the assigning of its budget, but instead by the aim of satisfying an interest shared with a specific sector of voters, despite it having been declared unconstitutional and null and void on repeated occasions by the supreme interpreter of our Constitution, and, as such, in conflict with the legitimate interests of the community.

The Court has stated that the joint committal of the fact implies that each co-perpetrator collaborates with an objective and causally effective contribution aimed at bringing about the joint aim, without it being necessary for each participant to carry out all the material acts that make up the core of the offence, as its committal is arrived at by aggregating the various contributions of those who make up the joint plan, provided that they are decisive contributions. The fact that the costs result from achieving an objective on which all members of the Executive Council were agreed and that they all jointly pushed forward the enactment of Decree 139/2017, calling the referendum, having also formalised (as proposed by the Vice-President, the Ministers of the Presidency and the Minister of Institutional and Foreign Affairs) a specific agreement in which they all authorised the various departments to carry out actions and enter into the necessary contracts to hold the referendum, may entail a shared liability in the disregard of the interest to which the public funds were subject, irrespective of the



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accounting items behind which payment was hidden, and the specific department against whose budget was based each of the part payments by which the total expense was apportioned.

All members of the Executive Council of the Generalidad not classed as possible perpetrators of an offence of rebellion are consequently classed as possible perpetrators of the offence of misappropriation of public funds as analysed, namely: Meritxell Borràs i Solé, Minister of Governance, Public Administration and Housing; Lluís Puig i Gordi, Minister of Culture; Carles Mundó i Blanch, Minister of Justice; Santiago Vila i Vicente, Minister of Enterprise and Learning, and Meritxell Serret i Aleu, Minister of Agriculture, Livestock, Fisheries and Food.

With regard to the rest of the members of the Executive Council (Carles Puigdemont i Casamajó; Oriol Junqueras i Vies; Jordi Turull i Negre; Raül Romeva i Rueda; Clara Ponsatí i Obiols; Antoni Comín i Oliveres; Joaquim Forn i Chiariello; Josep Rull i Andreu and Dolors Bassa i Coll), who are considered possible perpetrators of an offence of rebellion, the possible perpetration of these offences is also imputed, without prejudice to the attribution being subject to the precept indicated or subsumed in the aggravated offence of rebellion with misappropriation of public funds away from their legitimate investment as provided in article 473.2 of the Criminal Code.

FIVE.- As regards the personal situation of the different accused individuals, given the gravity of the offences attributed to some of the individuals under investigation who are currently at liberty, an order is issued for Carme Forcadell y Lluís, Jordi Turull i Negre, Raül Romeva i Rueda, Josep Rull i Andreu, Dolors Bassa i Coll and Marta Rovira i Vergés to appear before this investigating judge on 23 March 2018 at 10.30 am so that they might be informed of this committal for trial and to appear as provided in article 505 of the Criminal Procedure Act.

SIX.- Jordi Sánchez Picanyol, Jordi Cuixart Navarro, Oriol Junqueras i Vies and Joaquim Forn i Chiariello are to be remanded in custody with visitation rights and without bail, due to the risk of repeat offending as set out in the rulings still in force by which the precautionary measure was ordered and upheld.



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This notwithstanding, the individuals accused present a serious risk of flight. Without certainty, but with the firmness resulting from an inquiry into the essential facts, a risk of concealment is indicated resulting from the serious penalty that they face for their possible criminal liability for rebellion. But not only does the seriousness of the sentence and their imminent trial induce the natural temptation of flight, the risk is compounded by the combination of several other factors.

The investigation has shown the clear disregard of the individuals accused to comply with the decisions of the judicial authority, which have been disregarded contemptuously and systematically over recent years.

On the other hand, they are accredited as belonging to a large collective that is supportive of their cause as they have the same motivations that led the individuals accused to commit their offences. This is a collective with organised structures of association, specialist legal advice, significant economic resources due to contributions from its members, and international frameworks developed in recent years to defend their positions and provide support accordingly.

Finally, some of the individuals accused share a purpose with the accused individuals in custody, and apparently the same approach in the defence of their plans. These accused individuals have not hesitated in hindering the application of Spanish jurisdiction, seeking refuge in third countries, and have done so with full economic and organisational support, in addition to refusing to surrender to this Court. This then is a secondary but complementary element that suggests the possibility that in the proceedings being initiated those recently accused may engage in an attempt at concealment or flight that must be averted.

The facts and reasoning expressed in this decision thus respond to and resolve the express petition for liberty submitted by Jordi Cuixart in writing on 1 March 2018.

SEVEN.- In accordance with the indications set out in point 32 of the sole fact relevant to this decision, the new amount of bail as guarantee of the financial obligations that may result from this procedure is set at €1,602,001.57, which increased by one third in accordance with the provision set out in article 589 of the Criminal Procedure Act (€2,135,948.60), which must be



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provided jointly and severally by: Carles Puigdemont i Casamajó, Oriol Junqueras i Vies, Jordi Turull i Negre, Raül Romeva i Rueda, Meritxell Borràs i Solé, Clara Ponsatí i Obiols, Antoni Comín i Oliveres, Joaquim Forn i Chiariello, Josep Rull i Andreu, Lluís Puig i Gordi, Carles Mundó i Blanch, Dolors Bassa i Coll, Santiago Vila i Vicente and Meritxell Serret i Aleu.

In light of all the foregoing:

RULING

THE INVESTIGATING JUDGE SO RULES:

That the following be committed for trial for alleged offences of rebellion, in accordance with article 472 et seq. of the Criminal Code: Carles Puigdemont i Casamajó, Oriol Junqueras i Vies, Jordi Turull i Negre, Raül Romeva i Rueda, Antonio Comín i Oliveres, Josep Rull i Andreu, Dolors Bassa i Coll, Clara Ponsatí i Obiols, Joaquim Forn i Chiariello, Jordi Sánchez Picanyol, Jordi Cuixart Navarro, Carme Forcadell i Lluís and Marta Rovira i Vergés.

That the following be committed for trial for alleged offences of disobedience, in accordance with article 410 of the Criminal Code: Lluís María Corominas i Díaz, Lluís Guinó y Subirós, Anna Isabel Simó i Castelló, Ramona Barrufet i Santacana, Joan Josep Nuet i Pujals, Meritxell Borràs i Solé, Lluís Puig i Gordi, Carles Mundó i Blanch, Santiago Vila i Vicente, Meritxell Serret i Aleu, Mireia Aran Boya Busquet and Anna Gabriel Sabaté.

That the following be committed for trial for the alleged offence of misappropriation of public funds, in the terms set out in the previous points of law: Carles Puigdemont i Casamajó, Oriol Junqueras i Vies, Jordi Turull i Negre, Raül Romeva i Rueda, Meritxell Borràs i Solé, Clara Ponsatí i Obiols, Antoni Comín i Oliveres, Joaquim Forn i Chiariello, Josep Rull i Andreu, Lluís Puig i Gordi, Carles Mundó i Blanch, Dolors Bassa i Coll, Santiago Vila i Vicente and Meritxell Serret i Aleu.

The precautionary measure of remand is upheld, with visiting rights and without bail, for Oriol Junqueras i Vies, Joaquim Forn i Chiariello, Jordi Sánchez Picanyol and Jordi Cuixart



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Navarro, resolved in the manner in which the petition for liberty has been lodged by the latter in writing on 1 March 2018.

The personal precautionary measures agreed with regard to Carles Puigdemont i Casamajó, Anna Gabriel Sabaté, Antonio Comín i Oliveres, Clara Ponsatí i Obiols, Lluís Puig i Gordi and Meritxell Serret i Aleu are maintained.

The new amount of bail in guarantee of the financial obligations that may result from this procedure is set at €2,135,948.60, which must be provided jointly and severally by: Carles Puigdemont i Casamajó, Oriol Junqueras i Vies, Jordi Turull i Negre, Raül Romeva i Rueda, Meritxell Borràs i Solé, Clara Ponsatí i Obiols, Antoni Comín i Oliveres, Joaquim Forn i Chiariello, Josep Rull i Andreu, Lluís Puig i Gordi, Carles Mundó i Blanch, Dolors Bassa i Coll, Santiago Vila i Vicente and Meritxell Serret i Aleu.

Said individuals are ordered to appear to provide preliminary statements on 16, 17 and 18 April 2018, at 10:00 am, which their legal defence must also attend. A separate ruling will indicate the day on which each one of the accused is to appear.

It is ordered that the criminal record sheets of the accused be requested.

It is ordered that notice be given of this order of committal for trial to the accused in person, informing them of the appeals that they can file against said order.

This ruling is thus passed, ordered and signed by Pablo Llarena Conde, Senior Judge of Second Chamber of the High Court, CERTIFIED by the attorney in the Administration of Justice.