



El Embajador de España

MINISTERIO DE ASUNTOS EXTERIORES
Y DE COOPERACION
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Formand
Det Udenrigspolitiske Nævn
Folketinget, Christiansborg
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København, d. 26. maj 2017

Kære Søren Espersen, *dear Søren:*

Idet jeg vurderer, at emnet kan have Deres og Det Udenrigspolitiske Nævns interesse, sender jeg Dem vedlagte ajourførte note vedrørende de eksisterende begæring om straffeforfølgning af det Catalanske Parlaments formand, Carme Forcadell, ved Retten i Catalonien. Emnet blev delvist berørt af Folketinget tilbage i december 2016 i form af et paragraf 20 spørgsmål til udenrigsministeren.

Med venlig hilsen

Enrique Pastor de Gana
Spaniens Ambassadør

LEGAL ACTION AGAINST

SPEAKER OF THE CATALAN PARLIAMENT, MS. CARME FORCADELL

On 9 November 2015, the Catalan Parliament approved Resolution 1/XI, establishing a roadmap for the Catalan secessionist process.

In its ruling of 2 December 2015, the Spanish Constitutional Court unanimously ruled that the Catalan Parliament's resolution was unconstitutional, and therefore null and void. This should have put an end to the secessionist process.

However, the Catalan Parliament's majority has continued to actively support and approve resolutions which seek to continue the process initiated on 9 November 2015 with the adoption of the above mentioned Resolution 1/XI.

1. RESOLUTION 5/XI 2016

By means of Resolution 5/XI (January 2016), the Catalan Parliament created a **Committee on the Constituent Process**. The Spanish Government lodged an appeal against this resolution with the Spanish Constitutional Court, on the grounds that it was in contempt of court –for it disobeyed Court ruling 259 of 2 December 2015- and constituted an attempt to further the secessionist process.

The Constitutional Court, which effectively found that the Committee's scope of action was largely identical to the content of the repealed Resolution 1/XI of 9 November 2015, which sought to advance a so-called 'constituent process' not contemplated by the Spanish Constitution, issued its first warning to the Bureau of the Parliament, including Ms. Forcadell, reminding them of their duty to prevent or stop any action that would involve circumventing or ignoring the Constitutional Court's ruling of 2 December 2015.

2. RESOLUTION 263/XI 2016

Despite the above mentioned warning, on 27 July 2016, the Catalan Parliament approved Resolution 263/XI, which ratified the conclusions reached by the **Committee on the Constituent Process**, which set out the steps required to complete the separation from Spain: a unilateral referendum – where a mere majority of valid votes in favour of independence would imply the ratification of Catalonia's independence; no minimum participation or reinforced majorities would be required- followed by the approval of a tailor-made constitution for a new Catalan State.

On 29 July, the Spanish Government referred the Catalan Parliament's decision to approve these conclusions to the Spanish Constitutional Court.

The Constitutional Court then issued a second warning to Ms. Forcadell, the Bureau of the Parliament and the Catalan Executive (Generalitat), reminding them of their duty

to prevent or stop any action that would initiate a secessionist process, while at the same time informing them of their potential liability, including possible criminal liability.

In October 2016, the Public Prosecutor for Catalonia filed a complaint with the Catalan High Court of Justice against the Speaker of the Catalan Parliament for **breach of duty and contempt of court in relation to the Constitutional Court ruling**. The proceedings resulting from the complaint are ongoing. Ms. Forcadell testified before the High Court of Justice of Catalonia on 16 December 2016.

3. RESOLUTION 306/XI 2016.

A second complaint has been filed with the High Court of Justice of Catalonia against Ms. Forcadell for breach of duty and contempt of court in keeping with the Constitutional Court ruling regarding the vote and approval by the Catalan Parliament of Resolution 306/XI (6 October 2016), which foresees a referendum and a so-called constituent process that would culminate in Catalonia's secession from Spain. Ms. Forcadell has testified before the Catalan High Court of Justice on 8 May 2017 in connection with this complaint.

CONCLUSIONS

1. The Speaker of the Catalan Parliament, Ms. Forcadell, has continued to **facilitate the preparation of the secessionist roadmap in the Catalan Parliament, despite the Constitutional Court ruling that declared it null and void on 2 December 2015.**

*It should be noted that this ruling clearly states that: "... public office holders are bound by an inescapable duty to abide by said fundamental statute (the Spanish Constitution). This does not necessarily mean defending its entire content from an ideological standpoint; however, it does mean undertaking to perform one's duties in accordance with the Constitution and with respect for the rest of the legal system (in this regard, see, inter alia, STC 101/1983, of 18 November, FJ3; and STC 122/1983, of 16 December, FJ5). The fact that this applies to all public officials indisputably arises from the constitutional nature of our State, which is rooted in the rule of law."*¹

2. Using her position as **Speaker of the Catalan Parliament**, Ms. Forcadell has played a prominent role in at least three **actions which violate the Spanish Constitution and the prevailing laws of Spain**: she has allowed the secessionist roadmap to be submitted, voted on and approved by the Catalan Parliament (Resolution 1/XI of 9 November 2015); she has permitted the Committee on the Constituent Process to be established (Resolution 5/XI of 20 January 2016); and she has allowed its Conclusions to be submitted to and approved by the Catalan Parliament (Resolution 263/XI of 27 July 2016), even though they furthered the secessionist roadmap that had previously

¹ See Spanish Constitutional Court Ruling 252/2015, 2 December 2015, p. 27.

been ruled null and void. And all of this in spite of a ruling and two formal warnings issued by the Constitutional Court, as well as warnings from the Catalan Parliament's own Legal Advisors. Given the fact that Ms. Forcadell has repeatedly and manifestly committed actions that clearly constitute contempt of court, the Spanish Government has twice referred her behaviour to the appropriate Catalan Courts.

3. Ms. Forcadell has publicly argued that it is her "*obligation to facilitate democratic debate in the Catalan Parliament*" and that "*in the Catalan Parliament it should be possible to debate anything*", in reference to the need for unlimited political dialogue. Although this statement grossly misrepresents the judicial reality of both complaints lodged before the Catalan High Court, good note should be taken of what the Constitutional Court ruling of 2 December 2015 states in this regard: "*... Public debate on political projects of this nature or any others that advocate constitutional reform, either within or outside the institutions, is afforded unconditional freedom precisely because of the protection granted by the Constitution itself*"². However, this same ruling confirms that "*converting such projects into legislation or other decisions by public officials is only possible through a process of constitutional reform. To do otherwise would be to release public officials from any requirement to obey the law, irreparably damaging citizens' freedoms*". In sum, political debate in the Catalan Parliament has always been -and continues to be- not only possible but desirable, and political aspirations of all kinds can be defended without violating the Constitution. This notwithstanding, public office holders such as Speaker Forcadell are always bound by the Constitution and must abide by the Spanish Constitutional Court's rulings, for the legitimacy of any public official's actions ultimately depends on whether they are in keeping with the Constitution and the legal system. In short, the democratic principle -which inspires the entire Spanish legal system-, cannot be construed in isolation from the rest of our constitutional and legal framework.

² See Spanish Constitutional Court ruling 259/2015, 2 December 2015, p. 32.