

# Spain's Constitutional Court attempts to block Catalan premier's investiture

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In an unprecedented action, Spain's Constitutional Court has given itself the power to decide who can and cannot be elected as regional premier of Catalonia.

It is the latest anti-democratic action aimed at preventing the formation of a secessionist government in Catalonia following the narrow victory of the Catalan nationalists in the December regional election.

Last week, the Popular Party (PP) government petitioned the court to suspend the candidacy of ousted regional premier Carles Puigdemont, leader of Together for Catalonia (JxCat), ahead of a debate on his appointment in the Catalan Parliament tomorrow.

Puigdemont fled to Brussels last October after declaring Catalan independence. In response, the PP government invoked Article 155 of the Constitution, dissolving the Catalan government and imposing snap elections. Fearing sedition and rebellion charges that led to the imprisonment of three deputies, including vice-premier Oriol Junqueras (Republican Left of Catalonia, ERC), Puigdemont has remained in self-imposed exile in Belgium.

The PP government's latest actions were fervently defended by the pro-Socialist Party (PSOE), *El País*, in three editorials, one of which declared, "The Spanish government, in the name of democracy and the Constitution, and in representation of the people, must exhaust all political and legal means within its reach in order to avoid an investiture that would see the institutions of self-government in the region facing a new conflict with the state."

In the end, the Constitutional Court balked at accepting the government's pre-emptive attack on Puigdemont's candidacy. But it ruled that he cannot be invested via a video link from Brussels, or vote by proxy as proposed by JxCat officials, and has to be physically present at tomorrow's swearing-in session.

The court declared that it had unanimously reached a decision "to preventively suspend the investiture of Mr. Puigdemont unless he appears in the parliament in person with prior judicial authorisation", that is, petition the Supreme Court for permission for him to attend the debate without threat of arrest.

The Constitutional Court also warned the new Speaker of the Catalan Parliament, Roger Torrent, who had put forward Puigdemont as the only candidate for premier, to obey its decision and prevent any moves to violate it.

The decision also means that if Puigdemont does not attend the swearing-in session in person, his election will be annulled. The only options he has left are either to renounce his candidature or try to travel back to Spain and put himself at the mercy of the Supreme Court.

However, Interior Minister Juan Ignacio Zoido made clear last week that, "We are going to make sure that he does not enter—not even in the trunk of a car". The Interior Ministry has ordered police and the militarized Civil Guard officers to strengthen security at border crossings, and three police vans have been stationed outside the regional parliament. Zoido also said Spain's security forces are keeping Spanish prosecutors updated with information and closely following Puigdemont's movements.

The Constitutional Court's decision has mended the open rift that developed within the Spanish ruling class after Prime Minister Mariano Rajoy ignored the cautionary advice of the State Council, Spain's highest advisory body composed of current and former ministers, prime ministers and top civil servants—including the Head of the Armed Forces, Governor of the Bank of Spain, and Attorney General.

The Council found that there were no legal grounds

to justify the pre-emptive attack, adding that Puigdemont had been correctly elected as a member of the Catalan parliament and the charges against him were no impediment to him being a candidate for regional premier. It ruled, “there is no room for preventative resolutions referring to possible and not yet produced applications of legal precepts”. This was in reference to numerous instances when the Constitutional Court has rejected appeals to stop debate on certain issues or prevent laws not yet passed. These included the attempt by the PP to stop discussion in the Basque parliament over the Ibarretxe Plan in 2006, which proposed a free association of the Basque Country with Spain on an equal footing and referred to the right to self-determination.

The Council’s opinion, which was not binding, was followed by attacks by factions of the media against the government’s decision to ignore the Council and go ahead with its appeal to the Court.

*El Diario* proclaimed, “Rajoy’s determination to prevent the investiture of Puigdemont is taking the Constitution to the limit”. It quoted a Constitutional Court source as saying the court was entering “unexplored territory.”

An editorial in *El Español* warned, “It remains to be seen what happens now in the Constitutional Court. If it denies the appeal, it will be a tremendous slap for the Executive. But even if it was admitted, it is very likely that it will proceed at the cost of fracturing the Court, which has so far been unanimous in its rulings” against the secessionists.

*El Mundo* said that Rajoy’s “urgency to avoid the staging of a possible telematic investiture of a former premier of the Catalan government is understood, but when the rule of law wants to impose its moral and institutional superiority over the coup plotters, the law must be scrupulously respected, both in the content and in the form.”

*El País* was forced to concede that “sources familiar with the Spanish government’s strategy admit that it will be difficult to find enough legal arguments to file an appeal with the Constitutional Court to stop the investiture session, unless the Catalan parliament’s governing body, the Mesa [Speaker’s Committee], openly announces ahead of time that it plans to let Puigdemont be remotely elected by the separatist majority in the chamber.”

In fact, the wariness shown towards Rajoy’s action by the State Council and the Madrid-based media, which are known to be viciously hostile to Catalan nationalism, has nothing to do with defending democratic rights. Rather, their criticisms of Rajoy’s pseudo-legal preventive appeals was based on the fear that the government’s bending of the Constitution would divide the Constitutional Court, which has been one of the state’s main pillars against Catalan secessionism.

The ball is now in the Catalan nationalists’ court. They have until January 31 to invest a regional premier; if not, the Catalan statute declares that new elections have to be called.

Puigdemont reacted by attempting to present the ruling as some sort of victory, stating on Twitter that “Even the TC [the Constitutional Court] has rejected the abuse of law that Moncloa intended.” JxCat deputy Josep Rull announced Sunday morning that Puigdemont would request a judicial authorisation from the Supreme Court to attend the plenary session on Tuesday, thereby abiding by the Constitutional Court’s ruling.

A JxCat spokesman also said Sunday, “If [constitutional court judge Pablo] Llarena allows it, and we think he’ll act freely, Puigdemont will come and explain his plan for government.”

Within the secessionist camp, divisions are emerging over what to do next if Puigdemont cannot be elected. The ERC, JxCAT’s ally in parliament, has now opened the door for an alternative candidate to Puigdemont, fearing that if new elections take place it might open the door to the secessionist’s losing their narrow victory of last December.

In an interview to *La Vanguardia*, an ERC spokesman in the Spanish parliament revealed that “If necessary, we will have to sacrifice Puigdemont.”



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