



## INFORMATIVE NOTE No. 37/2016

### THE TC GRANTS PROTECTION TO A DEPUTY OF THE MADRID ASSEMBLY WHO WAS EXPELLED FROM THE PLENARY MEETING AND SUSPENDED FROM OFFICE FOR ONE MONTH

Chamber One of the Constitutional Court (TC) has unanimously upheld the appeal for constitutional protection filed by a deputy of the Socialist Parliamentary Group of the Madrid Assembly, who was expelled from Parliament and suspended from office for one month. The Court consequently repeals the resolution which, on 9 May 2013, sanctioned her under Art. 33 of the Madrid Assembly Regulations (RAM), in the case of any deputy who “*seriously attacks parliamentary discipline, order or courtesy, causing a disturbance with his/her conduct, by action or in words*”. The judgment considers that the sanction infringed the principle of legality (Art. 25.1 Spanish Constitution (CE)) as it was imposed in circumstances not contemplated by said Art. 33 RAM, and was also disproportionate. As a result of the foregoing, the right to participate in public affairs (Art. 23.2 CE) was also breached. The Reporting Judge was the President of the Court, Francisco Pérez de los Cobos.

The facts occurred whilst a plenary meeting of the Parliament of the Autonomous Community of Madrid was being held. The circumstances of the discussion- arising from a “*verbal answer to a question*” addressed by the deputy to the President of the Government Council- led the President of the regional Assembly to call the plaintiff’s attention three times, as she has accused the head of the regional Executive of being “*corrupt*”, linking him to a criminal scheme. Following the third warning, the President of the Assembly withdrew the floor from the deputy on a final basis, a decision that she upheld. Subsequently, when other matters were already being discussed, included in the agenda of the plenary meeting, and the Parliament has been restored to normal, the President of the Assembly announced the sanction foreseen in Art. 33 RAM and expelled the deputy from the room.

The judgment does not agree with the plaintiff’s claim that the sanction was ordered “*in the absence of any grounds whatsoever*”; both the initial communication of the sanction and the writ of reply of the President of the Parliament to the request for reconsideration were justified and allowed the plaintiff to know “*what sanction was being applied and the reasons why the President considered it pertinent*”. Consequently, from this point of view, the principle of legality foreseen in Art. 25.1 CE was not infringed.

However, Art. 25.1 CE was in fact infringed, according to the Court, when, once “*order had been restored and ordinary discussion had already commenced on other issues*”, the President of the Assembly announced his decision to sanction the appellant and ordered her to immediately leave the room.

“The sanctioning measure”, explains the Chamber, “lacked the continuity in time required by Art. 33 RAM, which requires that the sanction apply to facts just occurred”, as the

raison d'être of this article "is to guarantee order in all meetings". The sanctions that may be imposed by the President of the Parliament in the case of serious disturbance "are exclusively justified, given their exceptional nature, by the purpose sought and, consequently, cannot be severed from the moment when the disturbance took place". In other words, "the person causing a serious disturbance may only be immediately sanctioned by the President (...)".

The time difference between the action and sanction ordered evidences, states the judgment, "*that the offence foreseen in Art. 33 RAM does not exist either, i.e. a serious attack which, furthermore, causes disorder, as immediate action by the President of the Assembly was not necessary for the ordinary progress of parliamentary debate*". The "serious attack" referred to in Art. 33 RAM "*must be of a different kind, referring to situations where conduct is manifested within parliamentary premises, personal injury, etc.*".

Consequently, the sanction imposed in this particular case was "*disproportionate*" and "*entailed unequal treatment*" of the plaintiff with respect to other deputies in the same Assembly given that, as she herself evidenced before the Court, "*in similar circumstances (...) some of these representatives were immediately expelled from the parliamentary premises whilst others were not, but none of them was suspended from office for a month*". Furthermore, it entailed a breach of Art. 23.2 CE by depriving the plaintiff of "*her right to remain, with no interferences or illegal limitations and in equality conditions, in the public office to which she had been elected*".

As a result, the Court agreed to nullify the sanctioning decision delivered by the President of the Assembly on 9 May 2013; to recognise in favour of the appellant her rights to "*not be sanctioned for actions not amounting to a parliamentary infringement covered by Art. 33 RAM and to perform her tasks as Assembly deputy, with no illegitimate disturbances and in equality conditions*"; and, finally, to order the Madrid Assembly to pay the appellant the amounts left pending as a result of the sanction ordered.

Madrid, 3 May 2016