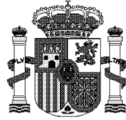

CONSTITUTIONAL COURT OF SPAIN
Office of the President
Press Office

PRESS RELEASE No. 32/2018

THE CONSTITUTIONAL COURT DISMISSES JORDI SÁNCHEZ´S PLEA AND REJECTS FOR THE SECOND TIME HIS BID TO RELEASE HIM FROM PRISON.

The Plenary Session of the Constitutional Court has unanimously dismissed the plea ("*recurso de súplica*") (i.e. the last available remedy in this kind of constitutional proceedings) brought by Jordi Sánchez against the decision rendered by the Court on March 7 h, which rejected his bid to release him from prison. Some weeks ago, Sánchez had requested the Court to issue a precautionary suspension of his pre-trial detention which might allow him to attend the session of the Parliament of Catalonia scheduled on March 9th, in order to debate his possible investiture as President of the Government of Catalonia.

Today, the Plenary Session rendered a decision where it notes that, according to consolidated constitutional case-law, the precautionary suspension of judicial decisions challenged through an appeal for constitutional protection (*"recurso de amparo"*) *"is a provisional measure of an absolutely exceptional nature"*. As a matter of fact, suspending the effects of decisions rendered by judges and courts *"entails an interference by the constitutional jurisdiction over decisions rendered by ordinary courts"*. Even though this might eventually happen, it *"must be examined with due caution in order to prevent the [Constitutional] Court from exercising functions which are constitutionally excluded to it"*. It further noted that the precautionary suspension of these decisions may be ordered only on an exceptional basis and when there is a risk that the fundamental rights invoked by the appeal are in danger of suffering irreparable damages.

In this particular case, the rights whose protection Sánchez requested to the Court through the appeal for constitutional protection ("*recurso de amparo*") brought on November 22nd, 2017 are the right to liberty and the right to an effective remedy before a tribunal. Therefore, those are the only rights that the Court must examine in order to determine whether it shall eventually order the precautionary suspension of the measures of imprisonment challenged through the appeal for constitutional protection.

The Court notes that, if the appellant, "*after lodging the appeal, may have had other fundamental rights conditioned, such as the right to political participation established in Article 23 of the Spanish Constitution (CE), as a result of the measure of provisional imprisonment, he must take action against such a supervening violation before the ordinary jurisdiction and then, [eventually] through the corresponding process for constitutional protection*". In other words, in the framework of this process for constitutional protection, Sánchez may not argue that the refusal to release him violates his right to political participation, since at the moment his provisional imprisonment was ordered, he "*was not even a candidate to the elections to the Parliament of Catalonia*".

The Court considers that, through his request, the appellant not only ignores the "*restrictive interpretation*" that must be carried out with regard to the precautionary suspension of judicial decisions. He equally forgets that the Supreme Court's refusal to grant him an extraordinary authorisation in order to attend the investiture session is a decision which "*may still be challenged*

either through ordinary jurisdictional channels or through an appeal for constitutional protection [lodged] before this Constitutional Court, as long as the previous judicial remedies have been exhausted".

According to the Court's conclusion, *"the appellant's request to use the plea proceedings against the denial of the suspension of the precautionary measures in this appeal for constitutional protection, with the aim of opening a sort of parallel appeal, is simply unfeasible"* . In fact, such an option would alter the jurisdictional norms that govern the processes of all appellants on an equal footing.

Furthermore, the Court notes that in this case, it is not appropriate to lift the precautionary measure of provisional imprisonment because such an action would mean upholding the appeal on constitutional protection by anticipation. In fact, suspending the measure of provisional imprisonment at this moment would lead to a correction of the judicial organ; and the correction of that provisional measure is, precisely, what is being discussed at this process for constitutional protection.

In addition, the precautionary suspension of provisional imprisonment "*would deprive of all effect*" the objectives pursued by that measure, which the case-law of this Court has recognised as "*constitutionally legitimate*" and "*coherent*" with the objective to prevent the risk of absconding, the obstruction to the action of justice and criminal recidivism.

Lastly, the Plenary Session has dismissed the claim that the Supreme Court's decision to uphold the measure of provisional imprisonment constitutes a mere confirmation of the decisions rendered by the Audiencia Nacional, the only ones examined in the framework of the appeal at issue. On the contrary, they are "*different decisions, [each] independent and autonomous, which rely on distinct arguments of each jurisdictional body and that, therefore, neither can they be considered equivalent as argued by the appeal, nor may they be considered as the implicit object of the appeal at issue*".

Madrid, 22 March 2018