



## PRESS RELEASE No. 14/2019

### THE PLENARY OF THE CONSTITUTIONAL COURT DECLARES THE UNCONSTITUTIONALITY OF THE RESOLUTIONS OF THE PARLIAMENT OF CATALONIA THAT INTENDED TO HOLD THE INVESTITURE SESSION WITHOUT THE CANDIDATE'S PRESENCE

The Plenary of the Constitutional Court has, by unanimity, declared the unconstitutionality and invalidity of two resolutions issued by the Parliament of Catalonia. The first of these resolutions, dated January 22<sup>nd</sup> 2018, had proposed the investiture of Carles Puigdemont as a candidate to the Presidency of the Government of Catalonia. The second one, dated January 25<sup>th</sup> 2018, which issued the call for a plenary session of Parliament on January 30<sup>th</sup> 2018 at 15 PM, has been declared unconstitutional and invalid concerning the excerpt that included, in that day's schedule, the debate of the program and the vote on the investiture of the then-MP Carles Puigdemont.

The judgement, which has been drafted by Magistrate Juan Antonio Xiol Ríos, considers that *"the challenged acts, inasmuch as they intended to hold the session for the investiture of the President of the Government of Catalonia without the physical presence of the candidate, do not observe some of the essential formal requirements that guarantee the correct development of this procedure, such as the personal presence of the candidate before the Chamber. Therefore, those resolutions are in violation of article 23 of the Constitution, article 67 of the Statute of Autonomy of Catalonia and article 149 of the internal Regulation of the Parliament of Catalonia"*.

The Court considers that, given the circumstances involved in this case (due to his judicial situation, the proposed candidate could not freely and personally appear before the Parliament, since a judicial arrest warrant had been issued concerning him), the investiture session at stake could only take place in the absence of that candidate. In this vein, the judgement points out to the significance of the decision adopted by the president of the Parliament, which resolved to postpone the session of investiture due to the Constitutional Court's precautionary measure (decision 5/2018, dated January 27<sup>th</sup>) to suspend any investiture session that lacked the physical presence of the candidate. The Court considers this to be a sufficiently relevant element to conclude that the challenged acts intended to hold an investiture session without the physical presence of the candidate, since the precautionary measures issued by the Court did not prevent to hold the investiture session if the candidate appeared before the Parliament in compliance with the law; namely, after having appeared before the courts and having obtained the pertinent judicial authorization.

The judgement considers that *"the personal exercise of the representative public office is a requirement that derives from the nature of that representative function. This function belongs only to the representative himself, not to third persons who may, by delegation, act in his name"*. Therefore, *"MPs must, as a general rule, exercise the functions of their ius in officium personally"*. Likewise, the Court declares that, also as a general rule, *"parliamentary acts must also be exercised in person"*. In particular, the judgement establishes that the activity of the candidate to the Presidency of the Government of Catalonia during the investiture session has

a strictly personal nature and must be carried out before the Parliament. The judgement considers that *“the appearance [of the candidate] through electronic means would undermine the correct development of these parliamentary proceedings, since the interaction between the candidate and the MPs is essential for its correct completion”*.

Finally, the Court also affirms that, if the candidate is not present in person, the debate of the investiture session would deprive the Parliament of the necessary elements of judgement so as to assess whether the proposed candidate deserves its trust or not. Thereby, it would affect a necessary guarantee to secure the correct exercise of the representative function. Accordingly, the investiture in absence of the candidate would violate the MP’s right to exercise their public office without illegitimate interferences and in accordance with legal rules and constitutional principles (article 23.2 of the Constitution). This would, in turn, constitute a violation of the citizens’ right to participate in public affairs through their representatives (article 23.1 of the Constitution).

Madrid, 20 February 2019