CONSTITUTIONAL COURT OF SPAIN
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THE PLENARY OF THE CONSTITUTIONAL COURT DISMISSES THE *AMPARO* APPEAL FILED BY JORDI SÀNCHEZ AGAINST THE DECISION OF THE *AUDIENCIA NACIONAL* THAT ORDERED HIS PROVISIONAL IMPRISONMENT

The Plenary Session of the Constitutional Court has unanimously resolved to dismiss the appeal for constitutional protection *("recurso de amparo")* filed by Jordi Sànchez i Picanyol against the Decision *("auto")* of the *Audiencia Nacional*, dated October 16th 2017, which ordered his provisional imprisonment. He also challenged a further Decision dated November 6th, that dismissed the appeal brought against this deprivation of liberty. The judgement of the Constitutional Court, which has been drafted by Magistrate María Luisa Balaguer, points out that the appellant has not suffered any kind of legal defencelessness and that both resolutions are sufficiently grounded.

The plaintiff argued that the decisions of the *Audiencia Nacional* had violated the following fundamental rights: the right to an ordinary judge as predetermined by the law; the right to personal freedom (article 17.1 of the Constitution [CE]) in connection with the right to an impartial judge and the right of defence (article 24.2 CE). In the case of the last right allegedly violated, he based his contention in the fact that the provisional imprisonment was ordered on different grounds than those invoked by the Public Prosecutor.

As for the violation of the right to personal freedom, the Court followed its own case law as well as the own laid out by the European Court of Human Rights (ECHR), and went on to declare that the interpretation of the regulations currently in force made by the magistrate of the *Audiencia Nacional* complies with the standard of reasonableness established by the Court´s constitutional doctrine.

Therefore, the judgement underscores that "*the fact that the magistrate that ordered the imprisonment considered arguments of her own in her task of monitoring the compliance of that measure with article 17 CE, does not in any way compromise her impartiality even though those arguments were not previously invoked by the parties to the proceedings, as long as the imprisonment measure refers to constitutionally admitted objectives of imprisonment*".

Thus, the Court considers that the appellant has not suffered any kind of legal defencelessness just because of the fact that the magistrate found, in her resolution, that the risk of criminal recidivism argued by the Prosecutor's Office was a sufficient motive to order the provisional imprisonment of the plaintiff. Therefore, "*there is no need to analyse whether there was a real chance for the appellant to challenge the causes that founded his provisional imprisonment, i.e. the risk of absconding or the destruction of evidence; in fact, it is possible to conclude that the final result of ordering his provisional imprisonment would have been the same, even if the judicial organ had also considered the arguments that the appellant raises now together with his contention of defencelessness*".

In addition, "*the plaintiff could have challenged the purported existence of a risk of absconding or of destruction of evidence when he contested, through the ordinary appeal, the legal base of the initial imprisonment decision. Thus, he had a fully appropriate opportunity to challenge the arguments on which that first decision was grounded*". Consequently, this argument of the plaintiff is dismissed by the Court on the grounds that in bears no direct influence on the final decision.

Likewise, the Constitutional Courts rejects the argument based on the refusal of the Criminal Chamber of the *Audiencia Nacional* to subordinate the hearing of the ordinary appeal to the physical presence of the plaintiff. In this regard, the judgment of the Constitutional Court refers to the case law of the ECHR and goes on to declare that this circumstance does not amount to a violation of fundamental rights, "*since the physical presence of the appellant was not necessary at the stage of the ordinary appeal, since he had already been present, and was able to intervene, when the precautionary measure of provisional imprisonment was adopted*". In addition, "*the period of time elapsed between the personal hearing that took place on October 16th 2017 and the appeal hearing, dated November 3rd, must not be considered excessive*".

Finally, with respect to the assessment of the risk of absconding, the Court concludes that *"the initial adoption of measure of provisional imprisonment, the argument referred to the type of offence and the seriousness of the criminal sanction may be reasonable enough to infer the existence of a risk of absconding"*.

Likewise, the argument regarding the right to an ordinary judge as predetermined by the law was also dismissed by the Court as premature. Indeed, the Court found that, just as in previous judgements 129/2018, 130/2018 and 131/2018, dated December 12th, "*we are witnesses of a situation in which the appellant resorts to this Court on the grounds of a violation of fundamental rights that has allegedly taken place in the framework of criminal proceedings that are still pending*".

Therefore, "*the plaintiff had the procedural opportunity to challenge the judicial organ's jurisdiction through the ordinary procedural means that are conceived for that purpose*".

Madrid, 28 February 2019