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THE PLENARY OF THE CONSTITUTIONAL COURT DISMISSES THE AMPARO APPEAL FILED BY JORDI CUIXART AGAINST THE DECISION OF THE NATIONAL HIGH COURT 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 Cuixart i Navarro 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 access to the 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) and to personal liberty for failure to establish a correlation between the facts with the freedom of expression and the rights of assembly and demonstration.

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"*.

The judgement, which reflects the extensive case-law of the European Court of Human Rights, insists that the *"appellant had the opportunity to discuss the existence of risks of absconding or destroying evidence by challenging, in his appeal, the legal grounds for the initial decision of imprisonment, thus having a full opportunity to respond to all the arguments set out in the decision of 16 October 2017"*. The motive is dismissed for lack of direct incidence in the adopted resolution.

On the other hand, the argument regarding the right to access to the 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 (See SSTC 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”.*

With regard to the violation of the right to personal liberty, which is based on the non-sufficient reasoning of the judicial decisions contested concerning the violation of the facts on freedom of expression, assembly and demonstration, it is also dismissed by the Court because this complaint was not raised in the previous judicial proceedings: *“There is no allegation in the appeal that presents a similarity of content with the indicated motive”.*

Madrid, 28 February 2019