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### THE CONSTITUTIONAL COURT DISMISSES *IN LIMINE* THE AMPARO APPEAL BROUGHT BY CIUDADANOS AGAINST THE CANDIDACY OF PUIGDEMONT, COMIN AND PONSATÍ TO THE EUROPEAN PARLIAMENT ELECTIONS

The First Chamber of the Constitutional Court has unanimously rejected *in limine* the appeal for constitutional protection ("*recurso de amparo*") filed by *Ciudadanos* against the judgement of the Administrative Court nº 2 of Madrid that endorsed the candidatures of Carles Puigdemont, Antoni Comín and Clara Ponsatí for the European Parliament elections.

The ruling considers that these candidatures do not constitute any violation of a fundamental right that may be guaranteed by this kind of appeal (art. 44 of the Organic Law on the Constitutional Court [LOTC]).

In its appeal, *Ciudadanos* argued that the decision of the administrative court might violate the fundamental right to equality that is part of the right of access to public office (articles 14 and 23.2 of the Spanish Constitution [CE]) by not complying with the legal requirements for the registration of candidates on the electoral list. It also alleged that the right to an effective judicial protection could have been violated (art. 24 CE).

The operative part of the judgement reads as follows:

*"The Chamber has examined the appeal brought and has resolved not to grant this appeal leave to proceed – in accordance with the provisions of article 50.1.a) LOTC – given the absence of any violation of a fundamental right that may be protected through this legal recourse, which, pursuant to article 44.1 LOTC, is a requirement to allow this Court to provide such protection.*

- A) *The reason pleaded cannot properly be considered as a valid ground to seek protection, since there is no relation with the violation of a fundamental right. Indeed, it is jurisprudence of this Court that "there cannot be a violation of constitutional rights as a consequence of the possible violation of the legality on the part of another candidate, since the constitutional rights that can be protected do not include the right of third parties to the mere observance of legality" (See Judgment STC 67/1987); and the reiterated case-law on this matter in previous Judgments 70/1987 and 113/1991, Legal Ground 2).*
- B) *The constitutional guarantee of equality in the access to public offices and functions (art. 23.2 CE) is not suitable to challenge the fundamental right of third parties. This would imply not only a misrepresentation of the constitutional guarantee itself but also the introduction before this Court of objections against the application and interpretation of the Law issued by administrative and judicial organs. If these organs had ruled by virtue of a flexible and favourable interpretation of the exercise of fundamental rights, this does not in any way constitute a discrimination against the other candidates – including the*

*one whose appeal is examined today – since the equality preserved here by the Constitution should only be the one referring to the framework of free competition between diverse [political] alternatives. This does not in any way undermine the fundamental right of all those who seek access to public office to do so through the electoral support of their fellow citizens (See Judgment 82/1987, Legal Ground 2)".*

Madrid, 9 May 2019