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### THE CONSTITUTIONAL COURT DISMISSES *IN LIMINE* THE AMPARO APPEAL FILED BY THE *PARTIDO POPULAR* AGAINST THE ADMINISTRATION'S ANNOUNCEMENT OF THE CANDIDACY OF PUIGDEMONT, COMÍN AND PONSATÍ TO THE EUROPEAN PARLIAMENT

The First Chamber of the Constitutional Court has resolved, by unanimity, to refuse grant leave to proceed to the three appeals for constitutional protection ("*recurso de amparo*") brought by the *Partido Popular* party (PP) against the judgements rendered by the Administrative Courts no. 2, 9 and 21 of Madrid, and the decision ("*auto*") of the Fourth Section of the Third Chamber of the Supreme Court. All those rulings had declared that Carles Puigdemont, Antoni Comín and Clara Ponsatí were eligible to run as candidates for the elections to the European Parliament.

The Constitutional Court has ruled that there is no violation of any fundamental right that might be invoked at *amparo* proceedings (article 44 of the Organic Law on the Constitutional Court [LOTC]).

The appellant considered that the following rights had been breached: the right to an ordinary judge as predetermined by the law (Article 24.2 of the Spanish Constitution [CE]) due to the alleged overstepping of judicial attributions committed by the Third Chamber of the Supreme Court, which issued a view on the matter even if it also declared not to hold jurisdiction over it; the right to passive suffrage and the equality of rights between the citizens of the European Union (article 23.2 CE) and the right to an effective jurisdictional protection, concerning the right to receive a jurisdictional ruling founded on the law (article 24.1 CE).

The entire wording of the ruling 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)".*
- C) *Finally, in accordance with the wording of article 49.1 of the Organic Law on General Electoral Regime [LOREG], the challenge against the announcement of candidacies that constitutes the object of this amparo procedure has been resolved by the court that held jurisdiction to do so. Thereby, it is not possible to find a violation of the fundamental right to an ordinary judge as predetermined by the law (article 24.2 CE). Indeed, as this Court has declared since judgement 47/1983, dated May 31<sup>st</sup>, that right "requires the judicial organ to have been previously created by a legal rule, that this rule has vested it with jurisdiction before the factual matrix or the legal action examined by the court have happened, and that is organic and procedural regime excludes any consideration of it as a special or exceptional organ" (ground no. 2; this doctrine was reiterated by judgements 48/2003, ground no. 17; 32/2004, ground no. 4; 60/2008, ground no.2). These circumstances apply in the instant case".*

Madrid, 9 May 2019