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### THE PLENARY OF THE CONSTITUTIONAL COURT UPHOLDS THE LEGALITY OF THE PRE-TRIAL IMPRISONMENT OF JORDI CUIXART, CONSIDERING IT A “*SUITABLE, APPROPRIATE AND PROPORTIONAL*” MEASURE

The Plenary Session of the Constitutional Court has, by unanimity, dismissed the appeal for constitutional protection (*“recurso de amparo”*) filed by Jordi Cuixart i Navarro against several decisions of the Supreme Court that denied putting an end to his pre-trial imprisonment on charges of rebellion.

The judgment, which was drafted by Magistrate Andrés Ollero, considers that there is no ground of unconstitutionality to be opposed to the challenged rulings. Indeed, those jurisdictional resolutions were rendered after having carried out a proper proportionality test on the suitability and appropriateness of the pre-trial imprisonment measure to be issued, taking into account the accusations made against Jordi Cuixart and the purpose of the said measure during the investigation phase of the procedure.

The Court reminded that the constitutional doctrine concerning pre-trial imprisonment requires *“the indispensable presence of a constitutionally legitimate finality, such as the avoidance of the risk of absconding, the prevention of any obstruction in the judicial investigation, or the need to prevent the risk of criminal recidivism”*.

In this vein, the judgments upholds the reasons provided by the investigating judge of this particular case in which Jordi Cuixart is being prosecuted in order to justify the pre-trial imprisonment measure. Those include *“the appellant’s reiterative refusal to comply with judicial rulings; his membership of a group that relies on an organisation structure, significant economic resources, and international contacts”*. The Constitutional Court’s ruling adds, as a complementary argument, the fact that other persons prosecuted in the same judicial procedure have fled Spain, and now rely on an economic and organisational infrastructure.

In addition, the Court has also dismissed the appeal’s contentions regarding the eventual prejudice suffered by the appellant’s underage son due to his father’s imprisonment. In that respect, the Constitutional Court pointed out that *“the mere prevention of a potential harm to underage children may not, in itself, suffice to make pre-trial imprisonment impossible”*.

Likewise, the judgment rejected the contention that the facts under investigation *“are protected by the liberties of assembly, demonstration and speech”*, which were argued by the plaintiff.

Besides, in respect of the eventual violation of the fundamental right to an ordinary judge as predetermined by the law, the Plenary of the Court refused to resolve the question on the merits because its invocation was considered premature. The Court founded its decision in its previous case law, contained in previous judgements 30/2019, 129/2018, 130/2018 and

131/2018, and reminds that the plaintiff's argument cannot be admitted given that *"in this situation, the appellant resorts to the Constitutional Court alleging a violation of fundamental rights during a criminal procedure in which a definitive judgment is still pending"*.

Therefore, when the *amparo* appeal was filed, *"the plaintiff still had the option to seek remedies to the alleged violation of a fundamental right in the framework of that very procedure"*.

Madrid, 14 May 2019