



## PRESS RELEASE No. 75/2019

### **THE PLENARY OF THE CONSTITUTIONAL COURT DISMISSES *IN LIMINE* THE AMPARO APPEAL FILED PAST THE PROCEDURAL DEADLINE BY JORDI SÁNCHEZ, WHEREBY HE CHALLENGED THE 30 DAYS DISCIPLINARY MEASURE ORDERED AGAINST HIM BY THE PENITENTIARY CENTRE Nº5 OF MADRID**

The Plenary Session of the Constitutional Court has resolved to refuse grant to proceed to the appeal for constitutional protection (*“recurso de amparo”*) brought by Jordi Sánchez i Pincayol against the Decisions of 2 and 26 March 2018, respectively, of the Penitentiary Surveillance Court nº 2 of Madrid. Both rulings confirmed the resolution dated 1 February 2018 adopted by the Disciplinary Commission of the Penitentiary Centre nº5 of Madrid (Soto del Real), which imposed on the appellant a penalty of 30 days of deprivation of walks and common recreational activities.

The Court ruling, drafted by Magistrate Fernando Valdés Dal-Ré, considers that the amparo appeal was filed after the expiry of the legal deadline since *“[t]he notification of the Decision which exhausted judicial remedies was issued on 27 March 2018, thereby allowing 20 working days to file the amparo appeal which expired at 3 p.m. on 27 April 2018. The written application, however, was filed on May 11, 2018, beyond the legally established deadline”*.

The Court explains that in this case, the time limit provided for in Article 43.2 of the Organic Law of the Constitutional Court (*“LOTC”*) shall apply, which corresponds to 20 days following the notification of the resolution issued following the previous judicial proceeding.

For the purposes of calculating the limitation period, the judgment clarifies, *“the dies a quo [or “day from which”] is determined by the notification of the latest decision that exhausted judicial remedies and the dies ad quem [or “day until which”] by the filing of the written application directed against the challenged decisions”*. In this sense, the judicial proceedings ended with the Decision of 26 March 2018 issued by the Penitentiary Surveillance Court and notified to the appellant the following day.

The appellant had been found guilty of a serious offence under article 109 (b) of the Prison Rules for making a telephone call from Unit 1 of the prison for the purpose of being broadcast at an electoral meeting.

The judgment is accompanied by a dissenting opinion signed by Magistrates Juan Antonio Xiol Ríos, Fernando Valdés Dal-Ré and María Luisa Balaguer. They believe that the appeal should have resulted in an upholding decision on the merits of the fundamental rights invoked. In their opinion, the amparo appeal presented should be qualified as a mixed appeal, since the alleged violation of the principle of legality on criminal matters (art. 25.1 of the Spanish Constitution) is formally and materially related to the contested judicial resolutions. Therefore, *“the procedural rules of admissibility to apply shall have been those provided for in Article 44*

*LOTC (which establishes a 30-day filing period)", and not those provided for in Article 43 of the Organic Law of the Constitutional Court.*

The Magistrates explain that the difference in time limits between appeals for constitutional protection in which the violations of fundamental rights have been originated by administrative actions (art. 43 LOTC) or by judicial actions (art. 44 LOTC) is not of minor importance because it is not unusual to witness dubious assumptions, such as this particular case. They argue that *"the legislator has the responsibility to solve this inexplicable and unjustifiable difference of regime, unifying the term of both precepts by means of a legislative reform"*.

Madrid, 22 May 2019