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**THE PLENARY OF THE CONSTITUTIONAL COURT CONSIDERS THAT
THE MEASURE OF PREVENTIVE DETENTION ORDERED BY THE
SUPREME COURT AGAINST JORDI SÁNCHEZ RESPECTS THE
PROPORTIONALITY PRINCIPLE AND RESPONDS TO A
CONSTITUTIONALLY LEGITIMATE PURPOSE**

The Plenary of the Constitutional Court has dismissed the appeal for constitutional protection (*amparo*) filed by Jordi Sánchez against the maintenance of his preventive detention without bail but with visiting rights, which was adopted in the Supreme Court rulings of 6 February 2018 and 20 March 2018, and against the violation of his rights to the effective protection of the judges and the courts, to be presumed innocent, to personal freedom, to ideological freedom and to political participation.

The judgment, whose judge rapporteur was Alfredo Montoya, considers that the adopted measures meet the requisites necessary to comply with the principles of legality and proportionality regarding the fundamental right of access to and exercise of public office, in accordance with the doctrine given by the Constitutional Court and the European Court of Human Rights (ECHR).

Moreover, the challenged decisions explain the procedural requisite by which the preventive detention continues, as well as the probable cause that the appellant participated in facts that allegedly constitute a serious offence. These decisions also respond to a constitutionally legitimate purpose, which is to avoid the risk of reoffending.

The Court explains that it is competent to review the external control which serves to verify that the precautionary measure has been adopted based on Law and in a reasoned and comprehensive way that meets the purposes of this institution. Thus, the grounds stated in the challenged rulings regarding the risk of reoffending “*cannot be considered as unreasonable and voluntarist, or that lack individualisation or enough grounds*”. On the contrary, the prospects analysed by them are sufficiently reasoned.

The possibility that these prospects are based on the appellant’s political ideology is ruled out. “*The assessment of the appellant’s situation, his capacities, his public office as regional deputy and his leadership of the Asamblea Nacional Catalana (Catalan National Assembly), as well as his past behaviour, does not censor, avoid or disrupt the exercise of his rights to ideological freedom and to participate in public affairs. On the contrary, this assessment exclusively serves to explain the reasons why the judicial decisions justify the prospects of the appellant’s future behaviour. These prospects are*

the basis of the constitutionally legitimate purpose of preventive detention, a purpose whose reality has been correctly appreciated and that justifies the adoption of the precautionary measure”.

The judgment considers that the precautionary measure of preventive detention is proportionate, as the appellant for *amparo* had the possibility to challenge the modification of this measure -in fact, he did challenge this measure twice in just over three months-. In response to his claims, *“the judicial bodies have weighted the rights and interests of the appellant and the society regarding political participation and the proper administration of justice, in terms that do not deserve constitutional criticism”.*

The Court also considers that the proportionality principle has been met after checking that measures other than imprisonment that interfered less in his right to political participation, were also taken into account. However, they were ruled out because the risk of reoffending *“was directly linked to a public activity that he has not given up. This activity has served from different fronts as an instrument to carry out the investigated facts. Finally, he could not prove his will to abandon this behaviour”.*

The judgment includes a dissenting opinion issued by Judges Juan Antonio Xiol Ríos and Fernando Valdés-Dal-Ré. They consider that the appeal for *amparo* filed by Jordi Sanchez should have been upheld and that the Supreme Court’s decisions that were challenged should have been declared null and void. In their opinion, maximum control was applied to the risks of reoffending; by depriving the appellant of his freedom, he was under an almost absolute control. They consider that it was necessary to assess, among other aspects, that the decision should have been taken considering that those conducts had already caused the extraordinary application of the mechanism set out in article 155 of the Spanish Constitution, and that the appellant had already renounced the Presidency of the Asamblea Nacional Catalana, which was the public office to which the risk of reoffending had been linked to a large extent. Both judges also highlight that, in accordance with the ECHR case-law, it was necessary whether it was possible to adopt alternative measures that would alleviate the restriction on the exercise of the right to political representation while observing the principle of proportionality with regard to the need of protecting the purposes of the criminal process.

Madrid, 21 January 2020.