CONSTITUTIONAL COURT OF SPAIN
Office of the President
Press Office

1980 - 2020

**PRESS RELEASE NO. 10/2020**

# THE PLENARY OF THE CONSTITUTIONAL COURT DISMISSES THE APPEAL FOR *AMPARO* FILED BY JORDI SÁNCHEZ AGAINST THE REJECTION ISSUED BY THE SUPREME COURT TO ALLOW HIM TO PERSONALLY ATTEND HIS INAUGURATION

The Plenary of the Constitutional Court has unanimously dismissed the appeal for constitutional protection *(amparo)* filed by Jordi Sánchez against the ruling issued by the investigating judge on 9 March and the ruling issued by the Appeals Chamber of the Criminal Division of the Supreme Court on 17 April 2018. These rulings denied the inmate furloughs requested to personally attend the defence and discussion of his inauguration as President of the Government of Catalonia *(Generalitat)* at the Parliament of this region.

The judgment, whose judge rapporteur was Cándido Conde-Pumpido Tourón, considers that *"the judicial bodies have weighted in a constitutionally appropriate manner the presence of objective and verifiable data that prove the existence of a relevant risk of reoffending"*. Moreover, there were also objective and verifiable data that proved that, had the transfer between the prison and the Parliament been authorised, *"the extent at which the public safety may have been altered justified the appellant's deprivation of the exercise of his representative function"*.

The appellant considered that the Supreme Court should have authorised his release from prison to attend the voting of his inauguration as president of the *Generalitat* on 12 March 2018, given the individual and collective dimension of the right to political participation and of access to public office (article 23 of the Spanish Constitution).

The Court recalls that the obtention of an ordinary or extraordinary furlough is not part of any of the fundamental rights affected by the preventive detention. Therefore, *"the appellant's capacity as parliamentarian and the relevant right to political representation are not in themselves an obstacle that averts the order or the maintenance of his preventive detention when the constitutional and legal requisites that make it legitimate concur, despite the different restrictions that are inherent to this measure"*. In this sense, the European Court of Human Rights acknowledges that the rights guaranteed by article 3 of Protocol no. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (right to free elections) are not absolute and may be subject to implicit limitations.

The legal qualification of the requested inmate furloughs as "extraordinary" shows that this legal provision is aimed at addressing exceptional needs. Such nature does not refer to performing functions that need to be continuously exercised under a release regime, like the inauguration as President of the *Generalitat* for which the furlough was requested. These functions are not compatible with the preventive detention, as this regime inevitably limits those rights that need an ability to move freely in order to be exercised.

By subscribing the constitutional doctrine laid out in the Constitutional Court Judgment 155/2019, of 28 November, the resolution explains that the consideration of the risk of reoffending is not only based on objective data. "The determining fact of this risk is not the appellant's constant aspiration to the independence of Catalonia, but the tenacity in committing illegal actions to reach that purpose and the consequences that this would involve for the constitutional order".

The purpose of the requested furlough is also relevant. As expressed in the challenged resolutions, the evidence gathered attributes to him "*the execution of actions that extend over too long a period and were duly planned in order to achieve a structural breach of the Rule of Law and the social coexistence"*. He would have allegedly played a major role in trying to reach this purpose as an active politician and as president of a citizen association. All this evidence led to the ordering of his preventive detention.

Finally, the denial of the inmate furlough does not either infringe his right to be presumed innocent and to the freedom of political expression.

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 Sánchez should have been upheld and that the Supreme Court's decisions that where challenged should have been declared null and void. Among other reasons, they believe that the proportionality of the decisions to deny the release from prison was not correctly weighted as regards their influence on the right to political participation and representation. On the reiteration of violent turmoils, both judges warn that "it seems that the fact that the application of article 155 of the Spanish Constitution was still in force at the time when the release was supposed to take place has not been adequately weighted, as the application of this article was valid from 27 October to the setup of a new government of the *Generalitat* of Catalonia".

In this context, they consider that it should not be disregarded, among other aspects, that the appellant for *amparo* was exclusively requesting the authorisation to exercise one of his powers as deputy, which was the defence and discussion of his own inauguration as President of the *Generalitat.* This was a specific parliamentary action that did not seem to be in itself the kind of action that could be part of the conduct for which he was investigated and that could be considered as reoffending. Furthermore, the State's Government was the body that was directly and undeniably responsible for preventing the commission of offences in the field of safety and public order. Despite this, the inmate furlough was denied in an attempt to avoid these offences.

Madrid, 22 January 2020.