



CONSTITUTIONAL COURT OF SPAIN
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THE PLENARY OF THE CONSTITUTIONAL COURT DISMISSES THE APPEAL FOR AMPARO FILED BY ORIOL JUNQUERAS AGAINST THE DECISION OF THE SUPREME COURT THAT DENIED HIM AN INMATE FURLOUGH TO ATTEND THE PARLIAMENT OF CATALONIA

The Plenary of the Constitutional Court has dismissed the appeal for *amparo* filed by Oriol Junqueras against the order of 12 January 2018 and the order from the Appeals Chamber of the Criminal Division of the Supreme Court of 14 March 2018, which denied him an inmate furlough to leave prison so as to attend the session of the Parliament of Catalonia convened for 17 January 2018.

The judgment, whose rapporteur was Judge Juan Antonio Xiol Ríos, considers that the challenged court decisions did not violate the appellant's right to exercise representative functions with the requirements determined by law (article 23.2 of the Spanish Constitution), in relation to the right of citizens to participate in public affairs through their representatives (article 23.1 of the Constitution). The Court points out that "*judicial bodies have given appropriate constitutional weight to the existence of objective and verifiable data that make it possible to justify the existence of a relevant risk of repeated offences*".

Objective and verifiable evidence also proves the possibility that the granting of the authorisation requested by the appellant, and the necessary transfers between the prison and the Parliament of Catalonia, could entail a breach of public security of such a magnitude as to justify depriving the appellant of the exercise of his representative function in acts that were intended to be carried out, despite their relevance and special status in the parliamentary order.

Consideration must also be given to the purpose pursued with the permission requested, since, as stated in the challenged decisions, "*the prima facie accusation that led to the appellant's preventive detention charges him with the execution of events that were long overdue, duly planned, and aimed at achieving a structural breach of the rule of law and the social coexistence. He would have made a significant contribution to this actions as a member of the Parliament of Catalonia and Vice-President of the Government of Catalonia*".

The Court explains that, without a doubt, a decision to deny an inmate furlough requested by a public official to exercise functions inherent to this position interferes with the content of his right. However, such interference cannot be regarded as an infringement if it has a legitimate purpose and has been set out in a reasoned and proportionate decision. Furthermore, it points out that “*the precautionary measure of preventive detention inevitably limits the content of the right to exercise a representative office*”.

In this regard, it should be stressed out that the challenged judicial decisions do not deny the abstract possibility of obtaining extraordinary leave permits to exercise functions inherent to this public office. In this case, the rejection is based however on the objective circumstances involved, the nature of the offences charged and the updated assessment of the risk of repeated offences.

The judgment concludes by stating that, the fact that the Parliament of Catalonia was allowed to provide the necessary instruments to enable Oriol Junqueras to become a Member of Parliament, despite his preventive detention, and to delegate his vote if the Bureau of the Parliament found no reason to oppose it, should also be assessed.

The judgment includes the opinions of Judges Juan Antonio Xiol Ríos, Fernando Valdés Dal-Ré and María Luisa Balaguer Callejón. They consider that it would have been appropriate to uphold the *amparo* and declare the challenged resolutions null and void, as the Supreme Court did not make an adequate proportionality assessment with respect to the impact that the rejection of the furlough would have on the right to political participation and representation. As regards the riots to which the challenged decisions refer, these judges declare the following: “*At the time when the applicant’s release from prison should have taken place, he no longer held any public office at the Catalanian Government and article 155 of the Spanish Constitution was still in force (it entered into force on 27 October 2017) until the formation of a new Government in Catalonia. This fact seems to not have been properly weighed*”. Moreover, with respect to the risks that could arise from the transfer of Oriol Junqueras “*the possibility to weigh the implementation of alternative or additional measures that could avoid or reduce these risks cannot be disregarded*”. In fact, such measures could be revoked at any time if, once the transfer had been authorised, there were new objective signs indicating an update on the risk of a breach of the constitutional public order.

Madrid, 4 February 2020