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**THE PLENARY OF THE CONSTITUTIONAL COURT UPHOLDS THE MEASURE OF PREVENTIVE DETENTION ORDERED BY THE SUPREME COURT AGAINST RAÚL ROMEVA BECAUSE IT CONSIDERS IT TO BE PROPORTIONATE AND LEGITIMATE**

The Plenary of the Constitutional Court has dismissed the appeal for constitutional protection (*amparo*) filed by Raúl Romeva against the ruling issued by the Appeals Chamber of the Criminal Division of the Supreme Court of 17 May 2018. This ruling dismissed the appeal for *amparo* lodged against the ruling of 23 March 2018, which ordered the precautionary measure of preventive detention without bail but with visiting rights.

The judgment, whose judge rapporteur was Fernando Valdés Dal-Ré, considers that the appellant's right to personal freedom (articles 17.1 and 4 of the Spanish Constitution) and to political participation and representation (article 23 of the Spanish Constitution) has not been infringed. *“The challenged decisions explain the conduct by which the preventive detention is ordered; that is, there is probable cause that the appellant participated in the acts constituting a serious offence. Moreover, the adoption of the precautionary measure responds to a legitimate constitutional purpose: to avoid the risk of escape and of reoffending”*, states the judgment.

Also, the Court explains that the measure of preventive detention as regards the right to hold a representative public office cannot be considered disproportionate, because the Parliament of Catalonia was allowed to implement the necessary instruments to make it possible that the investigated parliamentarians that are under preventive detention could delegate their vote if the Bureau of the Parliament did not find any reason to oppose. In this case, the appellant for *amparo* used this instrument and the Bureau of the Parliament authorised him to delegate his vote in its agreement of 26 March 2018.

The judgment also rejects the complaints raised by the appellant regarding the violation of the following fundamental rights set out in the Spanish Constitution: to ideological freedom (article 16.1) and freedom of expression (article 20.1), right to obtain the effective protection of the Judges and the Courts (article 24.1), of access to the ordinary judge predetermined by law and to be presumed innocent (article 24.2), and the right to criminal legality (article 25.1).

The judgment includes a dissenting opinion issued by Judges Juan Antonio Xiol Ríos, Fernando Valdés-Dal-Ré and María Luisa Balaguer Callejón. They consider that

the appeal for *amparo* should have been upheld and that the Supreme Court's decisions that were challenged should have been declared null and void. Among other reasons, they believe that, in order to weight if the measure was proportionate, it was necessary to analyse if it was possible to take a decision that was less harmful to the constitutional interests related to the appellant's right to political representation, even if that decision did not totally eliminate the risk that the Supreme Court tried to control by revoking the release on bail that the appellant was enjoying. It was also necessary to assess, first, 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 second, 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, 25 February 2020.