CONSTITUTIONAL COURT OF SPAIN
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THE PLENARY OF THE CONSTITUTIONAL COURT UPHOLDS THE SUPREME COURT'S DECISION BY WHICH JORDI SÁNCHEZ WAS DENIED SEVERAL INMATE FURLOUGHS TO PERSONALLY ATTEND A FEW RALLIES ORGANISED DURING THE ELECTION CAMPAIGN

The Plenary of the Constitutional Court has dismissed the appeal for constitutional protection *(amparo)* filed by Jordi Sánchez against several decisions issued by the Supreme Court. These decisions denied him the extraordinary inmate furloughs that he requested to attend two rallies organised for his candidacy to the elections of the Parliament of Catalonia, the request to have contacts (interviews) with the media that were not included in the prison's internal ordinary regime, and the claim to extend his access to the internet beyond the ordinary regime of control established by that correctional institution.

The judgment, whose judge rapporteur was Andrés Ollero, explains that the Supreme Court's decision did not infringe the appellant's right to directly participate in public affairs and to access on equal terms to public office (article 23 of the Spanish Constitution). Indeed, *"given the sound assessment on the risk of reoffending that justified the maintenance of his preventive detention [...], the denial of the extraordinary furloughs requested to attend some rallies is coherent with the legal provision that regulates these furloughs. It expresses an adequate weighting of the constitutional rights and interests at stake, and therefore, the challenged limitations cannot be considered unjustified, disproportionate or unequal"*.

The Court recalls both its constitutional doctrine and that of the European Court of Human Rights, which holds that the rights to political participation are not in themselves an obstacle that averts the order or the maintenance of the preventive detention of a parliamentarian when the constitutional and legal requisites that make it legitimate concur.

Regarding the appellant's complaint that he has been deprived of his right to keep oral and written communication with the outside, the judgment points out that this is not true, since *"he has been able to communicate according to the ordinary guidelines that define the prison's internal regime. Therefore, there is no absolute exclusion that has prevented him from participating in the election campaign"*.

The judgment concludes by ratifying the Supreme Court's resolution as regards the decision to not increase the ordinary regime of the appellant's personal

communications or his access to the internet, as "*this would allow for the risk situations that the prison has tried to avoid. Moreover, this would not only enable the fostering of immediate mobilizations, but it could also be used to promote turmoils in response to the institutional setup resulting from the elections*".

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 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 and to allow a greater contact with the media inside the prison was not correctly weighted as regards their influence on the right to political participation and representation.

In this sense, the right to political participation should had been linked to the right to the freedom of information for people deprived of liberty, in line with the case-law established by Constitutional Court's judgment 6/2020, of 27 January. Finally, according to the ECHR case-law, it was necessary to analyse 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, 2 March 2020.