



PRESS RELEASE NO. 43/2020

**THE PLENARY OF THE CONSTITUTIONAL COURT DECLARES THAT
THE PREVENTIVE DETENTION ESTABLISHED BY THE SUPREME
COURT AGAINST TURULL AND RULL DOES NOT INFRINGE THEIR
RIGHT TO POLITICAL PARTICIPATION**

The Plenary of the Constitutional Court has dismissed the appeals for constitutional protection (*amparo*) filed by Jordi Turull i Negre and Josep Rull i Andreu against the Supreme Court rulings of 23 March 2018 and of 17 May 2018. In the first ruling, said Court established on the appellants a precautionary measure of preventive detention without bail but with visiting rights. In the second ruling, the Appeal Chamber of the Criminal Division of the Supreme Court confirmed the precautionary measure of imprisonment.

The judgment, whose judge rapporteur was Encarnación Roca, explains that the appellants' right to personal freedom was not violated, as the appellants claim, because the Supreme Court did not give enough reasons to agree on their preventive detention. On the contrary, this measure was justified as there is corroborated evidence based on facts that allegedly constitute serious crimes. Moreover, the adoption of this precautionary measure responds to "*constitutionally legitimate purposes such as to prevent the risk of escape and the risk of reoffending*".

In this scenario, the appellants for *amparo* believed that these resolutions had infringed their right to access on equal terms to public office (article 23.2 of the Spanish Constitution). The Court argues that "*the intervention of the preventive custody is not disproportionate, given the moment when the challenged resolutions were issued and the concurring circumstances of this case, which refer to the nature of the investigated actions and the appellants' participation*".

The judgment, that includes constitutional doctrine, insists on the fact that the limitations claimed by the appellants for *amparo* in the performance of their duties as members of parliament "*inevitably derive from their situation of deprivation of liberty, since some of the powers of political representation attached to the office are affected by the situation of preventive detention*".

From the perspective of constitutional control, the Court has finally assessed as well the fact that the appellants were able both to challenge the precautionary measure of imprisonment through the existing legal remedies and to delegate their vote if the Bureau of the Chamber found no reason to oppose it.

The judgment includes a dissenting opinion by Judges Juan Antonio Xiol Ríos, Fernando Valdés Dal-Ré and María Luisa Balaguer Callejón. They all consider that, given the new nature of the problem posed and the key relevance of the right to political representation in the system of parliamentary democracy, the appeal should have been upheld, since their fundamental right had been violated according to the requirements set out in the law (article 23 of the Spanish Constitution). Among other facts, they point out that it was necessary to consider whether it was possible to adopt alternative measures that would alleviate the restriction on the exercise of their right to political representation as required by the case law of the European Court of Human Rights. This should be done while respecting the principle of proportionality as regards the need to protect the purposes of criminal proceedings. Also, it should have been considered that the decision had to be made without forgetting that their behaviour had already provoked the extraordinary application of the mechanism laid down in article 155 of the Spanish Constitution.

Madrid, 9 March 2020