

News

The Catalan Ombudsman demands respect for electoral results and that all MPs can hold office without limitations

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Statement

It reaffirms that the prison on remand is disproportionate and that some decisions violate the principle of separation of powers

The Catalan Ombudsman has made statements on several occasions about the criminal cases that are being substantiated against civil society leaders and members of the previous Catalan Government and the Parliamentary Committee of the eleventh legislature. It must be reaffirmed that the criminal qualification of rebellion (and also of sedition) proposed by the State Prosecutor Office and accepted by the highest jurisdictional bodies seems completely disproportionate to describe the facts of all known. The statements of the Spanish military police and the last decisions of the examining judge and the Appeals Chamber of the Supreme Court construct a fictitious narrative of violence, which is essential for the criminal type of rebellion, that does not conform the reality of what has happened in Catalonia in recent years and nowadays. The retroactive qualification as intimidating of great demonstrations that have been exemplary for their civility entails a serious risk of violation of freedom of expression, assembly and demonstration.

The disproportion of the accusations has led the Central Court of Instruction n. 3 of the Spanish Supreme Court, first, and the examining judge, second, to decree precautionary measures of prison on remand for several people; measures that are still maintained for two former members of the Government and the two former presidents of the Catalan National Assembly and Òmnium Cultural. These precautionary measures of deprivation of liberty cannot be justified either by the risk of escape, since these people have not shifted in any case their legal responsibilities, nor by the criminal reiteration, even if the legal viability of the offenses they are accused of was accepted, since their personal and institutional circumstances have changed significantly with regards to the moment in which they were initially decreed.

Therefore the Catalan Ombudsman reiterates that there are no indications for the crimes of sedition or rebellion and that the prison on remand is not justified neither for the four interns nor, possibly, for the former president of the Catalan Government and other members of the executive council, currently outside the borders of the State.

In this context, justice should facilitate all those MPs who, for reasons beyond their control, cannot in fact exercise their functions in the Parliament of the XII legislature, are able to do so without any limitation to their status as elected, taking into account that they have not yet been tried nor sentenced.

The judge decision on January 12th, 2018, denying the request of Vice-President Junqueras –extensible to the other two MPs deprived of freedom– of approaching a penitentiary centre of Catalonia and to enjoy the necessary permits for participating in the constitutive and investiture

sessions of the Parliament violates, in the opinion of this institution and the jurisprudence of the European Court of Human Rights (EctHR), the right of political participation of the three MPs and the principle of separation of powers; rights that should not be confined to the two sessions indicated, but to the entire legislature.

Indeed, article 23 of the Spanish Constitution and article 3 of the Additional Protocol to the European Convention on Human Rights, when recognizing the right to active and passive suffrage, determine that people who are not banned from running for public office may be chosen as representatives. The right to passive suffrage is not limited, however, to the right to be voted on or to be chosen, but it is deployed, once chosen, to the right to carry out the task of representation for which they have been elected.

This function is not limited to the right to vote in the plenary, but rather to the legislative work, political control and public policy promotion that MPs develop inside and outside the chamber, in plenary and in committees. Likewise, the right of political participation of citizens recognized by article 23.1 of the Spanish Constitution is affected and it does not limit to choosing candidates in elections –which could be submitted legally despite being affected by precautionary measures of prison on remand –, but includes the right that the people who have been elected can hold the position and carry out the functions it entails. Otherwise, there is a violation of their right to political participation, fraud to the voters and an alteration of the electoral results.

On the other hand, the Catalan Ombudsman cannot fail to point out that the examining judge commits a surprising violation of the principle of separation powers when he qualifies the Bureau of Parliament as an administrative body, and not a government of an institution of democratic representation, and when he indicates how Parliament's Rules of Procedure should be interpreted to allow the delegation of votes of deputies deprived of liberty, and only with regards to them.

The jurisprudence of the EctHR recognizes that the political rights of people deprived of freedom are not absolute and can be modulated, in accordance with the principle of proportionality, by the electoral legislation of the states. Once again, however, the Supreme Court's ruling does not make any modulation about the personal and unique situation of the MPs, refusing all of the measures proposed to participate in the sessions of Parliament.

It is the responsibility of the judiciary to determine what these measures should be, but, in the opinion of the Catalan Ombudsman, the weighting of political rights achieved in elections with all democratic guarantees and an unwarranted precautionary measure regarding disproportionate criminal charges must swing necessarily towards the maximum respect of the former and, therefore, to facilitate the full participation of MPs deprived of freedom in parliamentary tasks.

Síndic de Greuges de Catalunya

Pg. de Lluís Companys, 7 | 08003 Barcelona |

Tel. 933 018 075 | Fax 933 013 187 | sindic@sindic.cat