

STATEMENT OF 9TH MARCH

The Catalan Ombudsman warns that preventing Jordi Sànchez from exercising his political rights is a serious attack on the principles that sustain the rule of law in Spain and the European Code of Human Rights

- **The institution considers that denying the possible inauguration of the candidate for the presidency of the Catalan Ombudsman violates the rights of political participation of all the citizens of Catalonia**
- **Only the President of Parliament has powers over the inauguration debate**

The Catalan Ombudsman considers that the ruling of the judge of the Supreme Court of special cause no. 20907/2017, of March 9th, which denies the request of Jordi Sànchez to enjoy the necessary permits to participate, as a candidate, in the inauguration session convened by the President of the Parliament of Catalonia for the next 12 March, violates the rights of political participation of the deputy and of all the citizens of Catalonia.

Indeed, article 23 of the Spanish Constitution and article 3 of Additional Protocol no. 1 to the European Convention on Human Rights, when they recognize the right to active and passive suffrage, determine that people who are not banned from public office may be chosen as popular representatives. The right to passive suffrage is not limited, however, to the right to be voted or to be chosen, but it is deployed, once chosen, to the right to carry out the task of representation for which the person has been elected. This was stated by the European Commission on Human Rights in 1984, considering that "it is not enough that a person has the right to be a candidate, they should also have the right to exercise as a parliamentarian once elected. Adopting an opposite opinion would mean voiding the meaning of the right to be a candidate in elections" (case M. against the United Kingdom, decision of the Commission of March 7, 1984, No. 10316/83).

In the case of Catalonia, the Statute of Catalonia (art. 67) states that to be a candidate and become President of the Catalan Government one must be a member of Parliament. Therefore an MP has potential right to become President of the government, if this person has the majority support of the chamber. This can only be verified and decided by the President of Parliament, after consultations with the parliamentary groups. The judicial power cannot replace this democratic function. On the other hand, according to Law 13/2008 and the Regulation of the Parliament of Catalonia, the candidate for the presidency of the Catalan Government defends the candidacy in person, in the inauguration session convened by the presidency of the Parliament.

In this regard, despite the very clear differences between the two situations –and more serious from the procedural point of view in the previous case –, it is necessary to recall the precedent of the year 1987, when the petition for pre-release, the Spanish National Court allowed the participation in the plenary session of the Basque Parliament to the candidate for Lehendakaritza (Basque Government) by Herri Batasuna, Juan Karlos Yoldi.

In summary, Jordi Sànchez is holder of all the political rights recognized by the Spanish Constitution and international treaties. The refusal of the judge to allow his participation in an inauguration session in which the proposed candidate violates these rights flagrantly and goes against the jurisprudence of the European Court of Human Rights (ECtHR), which considers that "the role of the judicial bodies cannot change the expression of the people in any case "(STEDH Kerimova against Azerbaijan, September 30th, 2010).

This jurisprudence recognizes that the political rights of persons deprived of liberty 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 Spanish Supreme Court's rulings does not make any modulation about the personal and unique situation of the Member of Parliament, who is denied every single one of the measures proposed to participate in the sessions of Parliament. In addition, in this case, the right of political participation of all citizens is affected, while article 23.1 of the Spanish Constitution is not limited to the election of candidates in elections, but includes the right that the people who have been elected can carry out their duties and functions.

The Catalan Ombudsman, within the framework of its statutory mandate for the defence of individual rights and public freedom, and regardless the respect for the independence of the judiciary, has stated on different occasions that the criminal qualification as rebellion or sedition of the events around October 1st is clearly disproportionate and may violate the principle of criminal legality.

Likewise, it is disproportionate to hold four people on prison remand within the framework of this procedure. As long as this has been decided based on the ideology of these people, it would be contrary to the right to freedom of expression, the freedom of assembly and expression and the right to personal freedom and security.

In the face of this ruling, the Catalan Ombudsman considers that active and passive elements of the right to political participation and freedom are violated, and that there are reasons to file an appeal before the Criminal Court of the Spanish Supreme Court. In the event that the request of Jordi Sànchez is rejected again, an appeal should be filed before the Spanish Constitutional Court, and if this unjustified, arbitrary and discriminatory constraint persists, in accordance with the precedent of the Yoldi case, an action should be brought before the European Court of Rights Human with request for precautionary measures to allow candidate Jordi Sánchez to be invested as president of the Government of Catalonia.

In this context, the Catalan Ombudsman will inform the Parliament of Catalonia, the social entities throughout the territory and society in general of the initiatives carried out in the last months following these continuing violations of fundamental rights and freedoms.

The institution also encourages citizens to file complaints and reiterates its commitment to communicate to the highest instances of defence of human rights, especially in the international sphere of the Council of Europe, the European Union, and of the United Nations.