

News

Statement regarding the suspension from public office of six MPs of the Parliament of Catalonia

11/07/2018

On July 10th, 2018, the judge's ruling of the Spanish Supreme Court in special cause 20907/2017 was issued, ordering the suspension from public office of six MPs of the Parliament of Catalonia in application of article 384 bis of the Spanish Law of criminal prosecution (LeCrim).

With regard to this decision, the Catalan Ombudsman states the following:



1. As indicated in the statement issued on June 29th, an interpretation of article 384 bis in accordance with the doctrine of the Spanish Constitutional Court (STC 199/1987) would make inapplicable the automatic suspension of office or public function of the people indicted and imprisoned for alleged crimes linked to the Catalan process, since in this case the use of weapons or explosives has not occurred at any time, as the Spanish Supreme Court itself acknowledges in its ruling June 26th, 2018. For this reason, the Catalan Ombudsman believes that the MPs affected by the suspension measure, in exercise of their right of participation and representation, may appeal against the decision to the competent jurisdictional bodies, including the constitutional one.

2. The suspension of public office or public function of article 384 bis of LeCrim may have a direct effect on the majorities of the Parliament of Catalonia and may distort the result of the elections of December 21, 2017. In this regard, it should be noted that, by means of a judicial decision of a merely precautionary nature and not on the grounds of the case under trial, several MPs could be deprived of exercising their functions for an indefinite period. Therefore, there would be a violation of the fundamental right of participation of the MP as an individual in the Parliament and, above all, of the collective right of participation of Catalan voters in the formation of political majorities through elections every four years. This decision, at the present stage of the procedure, would contradict the case law of the ECtHR, for whom "the role of the judicial bodies cannot change the expression of the people in any case" (Kerimova against Azerbaijan, September 30th, 2010).

3. The alternative provided by the judge's ruling, according to which the Parliament of Catalonia could agree to replace the suspended MPs by other members of the corresponding candidates, is not provided for in the legal system, supposes an overruling of the judicial functions for invasion of the legislative power, represents an interference with parliamentary autonomy and raises for all these reasons serious difficulties of effective application. In particular, the delivery of acts of provisional MPs, that would correspond to the Electoral Board and that cannot be sustained in the Organic Law of General Electoral Regime (LOREG). Therefore, all the risks of distortion of the electoral results of the last elections to the Parliament of Catalonia indicated in the previous point subsist for the time being.

4. Finally, the Catalan Ombudsman again emphasizes, as he has shown in his recent report of June 2017, on the violation of fundamental rights and freedoms arising from the criminal justice reaction to October 1st, that the accusations of rebellion, sedition and criminal organization that are being substantiated by the Spanish Supreme Court, the Spanish National Court and other courts of instruction are clearly disproportionate to the events that occurred in Catalonia, particularly between September and October 2017. More specifically, regarding the rebellion, the references made by the Spanish Constitutional Court (STC 199/1987) to the use of war and explosive weapons to justify the suspension of public office of people prosecuted and imprisoned by rebellion clearly denote that none of the facts that are investigated in special cause 20907/2017 incur in this criminal type. This ruling is a step in the opposite direction to the necessary dialogue to resolve the political conflict in Catalonia.

This statement is brought to the attention of the European Commissioner for Human Rights and the Parliamentary Assembly of the Council of Europe to their knowledge and consideration.

Síndic de Greuges de Catalunya

Pg. de Lluís Companys, 7 | 08003 Barcelona |

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