EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 195 (2019)
28.05.2019

Decision to suspend the plenary sitting of the Parliament of the Autonomous Community of Catalonia complied with the Convention

In its decision in the case of **Forcadell i Lluis and Others v. Spain** (application no. 75147/17) the European Court of Human Rights has unanimously declared the application inadmissible.

The Court held that the interference with the applicants' right to freedom of assembly could reasonably be considered as meeting a "pressing social need". The suspension of the plenary sitting of the Parliament of the Autonomous Community of Catalonia had been "necessary in a democratic society", in particular in the interests of public safety, for the prevention of disorder and for the protection of the rights and freedoms of others, within the meaning of Article 11 § 2 of the Convention.

Furthermore, the Court observed that the decision by the Bureau of the Parliament to convene a plenary sitting had involved a manifest infringement of the decisions previously given by the Constitutional Court, pursuing the aim of protecting the Constitutional order.

The decision is final.

Principal facts

The applicants are 76 Spanish nationals who live in Barcelona. The case concerns the Constitutional Court's decision to suspend the plenary sitting of the Parliament of the Autonomous Community of Catalonia on 9 October 2017.

On 1 October 2017 an unauthorised referendum was held to decide on Catalonia's secession from Spanish territory. On 4 October 2017 two parliamentary groups (representing 56.3% of all seats in Parliament) requested that the Bureau of the Parliament of Catalonia convene a plenary sitting of Parliament, during which the President of the Government of Catalonia was to have assessed the results of the 1 October referendum and the effects of those results, pursuant to section 4 of Law no. 19/2017 on "the self-determination referendum". The Bureau granted the request, and the meeting was programmed for 10 a.m. on 9 October. Three other parliamentary groups (representing 43.7 % of the seats) contested the convening of that sitting on the grounds that it would infringe the Rules of the Parliament of Catalonia. Sixteen socialist MPs applied to the Constitutional Court for the issuing of an interim measure suspending the plenary sitting. The Constitutional Court declared the application admissible and ordered the provisional suspension of the plenary sitting. On 10 October 2017 (the day after the date originally scheduled for the sitting), the President of the Catalan Government appeared before a plenary session of Parliament and declared the independence of Catalonia as a separate republic, inviting Parliament immediately to suspend the effects of that declaration. On 26 April 2018 the Constitutional Court, judging on the merits, observed that the procedure followed by the Bureau of the Parliament to convene the plenary sitting had disregarded the provisional suspension of Law no. 19/2017 declared by the Constitutional Court on 7 September 2017 and had prevented the complainant MPs from discharging their duties. The Constitutional Court pointed out that it was the task of the Parliament of Catalonia to represent the whole population and not merely specific political factions, even if the latter represented the majority.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 11 October 2017.

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Relying on Article 10 (freedom of expression) read in conjunction with Article 11 (freedom of assembly and association) of the Convention, and Article 3 of Protocol No. 1 (right to free elections), the applicants complain that the Constitutional Court's decision to suspend the convener of the plenary sitting amounts to a violation of their rights as secured under those articles inasmuch as they were prevented from expressing the will of the voters having participated in the referendum of 1 October 2017. Relying on Article 6 (right to a fair trial), the applicants submit that neither the Parliament nor they themselves had had access to a court to put forward their grievances.

The decision was given by a Chamber of seven judges, composed as follows:

Vincent A. **De Gaetano** (Malta), *President*,
Georgios A. **Serghides** (Cyprus),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland),
Alena **Poláčková** (Slovakia),
María **Elósegui** (Spain),
Gilberto **Felici** (San Marino),

and also Stephen **Phillips**, *Section Registrar.*

Decision of the Court

Victim status

The Court at the outset considered the question whether there had been an infringement of the rights invoked in respect of the applicants themselves or else of the Parliament of the Autonomous Community of Catalonia. In the light of the circumstances of the case, it considered that the rights and freedoms relied upon by the applicants concerned them personally and were not attributable to the Parliament of Catalonia as an institution. It followed that the applicants could be designated as a "group of private individuals" claiming to be victims of a violation of the rights set forth in the Convention, within the meaning of Article 34 of the Convention.

Articles 10 and 11

The Court considered it appropriate to assess the applicants' complaint under Article 11. It observed in that connection that the right to freedom of assembly, like that to freedom of expression, was a fundamental right and one of the foundations of a democratic society.

The Court observed that the Constitutional Court's 5 October 2017 decision to provisionally suspend the 9 October plenary sitting had had a legal basis in Spanish law, namely section 56 of the Organic Law on the Constitutional Court, which provides for the possibility of adopting preventive measures geared to preventing an appeal before that court from being rendered nugatory. Those measures could be appealed within five days from notification. Furthermore, as regards foreseeability, the plenary sitting had been convened pursuant to Law No. 19/2017, which had been provisionally suspended by the Constitutional Court on 7 September 2017, which decision had been notified personally to all MPs. The Court took the view that the suspension of the plenary sitting had pursued, *inter alia*, the legitimate aims of "ensuring public security", "preventing disorder" and "protecting the rights and freedoms of others".

It emerged from the case-law of the Court that only convincing and pressing reasons could justify restrictions on the freedom of association. The Court observed that Parliament's decision to authorise the holding of the plenary sitting had stemmed, *inter alia*, from the failure to comply with the suspension of Law no. 19/2017. By adopting a suspension order, therefore, the Constitutional Court had been endeavouring to ensure compliance with its own decisions. That suspension

appeared justified because, as the Court pointed out, constitutional courts were empowered to take the necessary action to guarantee compliance with their judgments.

The Court agreed with the Constitutional Court that a political party could campaign for a change in the State's legislation or legal or constitutional structures provided that it used lawful and democratic means to do so and proposed changes compatible with the fundamental principles of democracy. It also considered that it was necessary to avoid situations whereby parliamentarians representing a minority in Parliament were prevented from discharging their duties, as pointed out in the Constitutional Court's judgment of 26 April 2018.

The Court concluded that the interference with the applicants' right to freedom of assembly could therefore be considered as meeting a "pressing social need" and was accordingly "necessary in a democratic society".

The Court dismissed the complaint as being manifestly ill-funded.

Article 3 of Protocol No. 1

The Court pointed out that for a case concerning referendums to fall within the scope of Article 3 of Protocol No. 1, the proceedings in question had to be conducted under conditions such as to ensure the free expression of the people's opinion in the choice of the legislature.

The Court considered that those conditions had not been fulfilled in the instant case. The plenary sitting of Parliament had been convened in pursuance of a law which had been suspended by the Constitutional Court and had therefore been temporarily inapplicable. The decision taken by the Bureau of the Parliament had therefore been prompted by a manifest failure to comply with decisions given by the Constitutional Court aimed at protecting the Constitutional order. Consequently, the Court declared the complaint inadmissible.

Article 6

The Court considered that this complaint had not been substantiated, and therefore dismissed it as being manifestly ill-founded.

The decision is available only in French.

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