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

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Political rights of three Catalan elected officials not infringed during their pre-trial detention

The case of Sanchez i Picanyol and Others v. Spain (applications nos. 25608/20, 27250/20 and 46481/20) concerned the applicants' pre-trial detention and alleged restrictions on their political rights under the Convention. Their pre-trial detention had been ordered by the Spanish courts in the wake of the demonstrations organised in Barcelona on 20 and 21 September 2017 and the unconstitutional referendum of 1 October 2017.

In today's **Chamber** judgment[1] in this case the European Court of Human Rights held, unanimously, that there had been:

No violation of Article 3 of Protocol No. 1 (right to free elections) to the European Convention on Human Rights in respect of all three applicants.

The Court held, in particular, that the national authorities had weighed up the various interests at stake in a manner that could not be characterised as arbitrary, and without interfering with the free expression of the opinion of the people. It found, *inter alia*, that the applicants' pre-trial detention, the rejection of their applications for temporary release and the first applicant's suspension from his office as a member of parliament – once the indictment had become final – had not been incompatible with the very essence of their right under Article 3 of Protocol No. 1 to be elected and to sit in Parliament.

No violation of Article 18 (limitation on use of restrictions on rights) of the Convention taken in conjunction with Articles 5 and/or 3 of Protocol No. 1 in respect of all three applicants.

The Court took the view that the various considerations raised by the applicants did not form a sufficiently coherent whole for it to find that their pre-trial detention had pursued a purpose not prescribed by the Convention.

No violation of Article 5 §§ 1 and 4 (right to liberty and security) of the Convention in respect of the second applicant.

The Court found that the evidence before it did not support the conclusion that the order of 23 March 2018 placing the applicant in pre-trial detention had been arbitrary and had been made for the sole purpose of preventing him from taking up the office of President of the *Generalitat*. It further held that the time taken to deal with his *amparo* appeal had not entailed an infringement of his right to a speedy decision on the lawfulness of his detention.

Principal facts

At the relevant time, the first applicant, Jordi Sànchez i Picanyol, was Chair of Assemblea Nacional Catalana ("the ANC"), a civil association for the promotion of Catalan independence. The second applicant, Jordi Turull i Negre, was Minister of the Presidency and spokesperson for the Catalan

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Autonomous Government ("the *Generalitat*"). The third applicant was Vice-President of the *Generalitat*.

In September 2017 the *Generalitat* and the Catalan Parliament, with the support of a number of civil-law associations, initiated a procedure to secede from the Spanish State, which involved organising a referendum on self-determination. To that end, the Catalan Parliament passed two laws which were suspended by the Constitutional Court a few days later and subsequently declared unconstitutional.

In spite of this, the referendum was called for 1 October 2017. As a result of the organisation of the referendum, the public prosecutor's office lodged a complaint against the President of the *Generalitat* and other members of the Catalan Government, including the second and third applicants.

Subsequently, an investigating judge ordered a search of the headquarters of the *Generalitat*'s Department of the Vice-Presidency and of Economic Affairs in order to gather evidence that might establish any criminal liability in connection with the organisation of the referendum.

Then, on 20 and 21 September 2017 – the dates scheduled for the search – some 40,000 people, answering the call of civil-law associations (Omnium Cultural and the ANC), gathered in front of the building in order to prevent the State security forces from entering. The blockade lasted more than 24 hours and gave rise to altercations, causing material damage in excess of 100,000 euros.

The referendum, although unconstitutional, was ultimately held on 1 October 2017, with roughly 40% of officially registered voters participating. The Catalan Government announced the result of the vote, indicating that the secessionist proposal had won with over 90% of the votes cast.

A few days later the applicants were placed in pre-trial detention: the first applicant on 16 October 2017 and the two others on 2 November 2017. The second applicant was subsequently released on bail on 4 December 2017, then taken back into custody on 23 March 2018, although he was due to stand as a candidate for the office of President of the *Generalitat* at the investiture session the following day.

On 27 October 2017 the Catalan Parliament officially and unilaterally declared Catalonia's independence. However, that declaration was suspended by the Constitutional Court and the Senate adopted measures the same day resulting in the dismissal of the Catalan Government and the calling of Catalan parliamentary elections for 21 December 2017. During their pre-trial detention, the applicants stood for election and were elected.

On 21 March 2018 the investigating judge placed all three applicants under formal investigation for insubordination and the second and third applicants for misappropriation of funds. Subsequently, on 9 July 2018, once the indictment had become final, the investigating judge informed the Catalan Parliament that all the applicants had been suspended from public office.

During their pre-trial detention the applicants made several applications for leave to attend sittings of parliament and the investiture session for the Presidency of the *Generalitat* (first and second applicants) but their applications were dismissed.

On 14 October 2019 all three applicants were sentenced to prison terms ranging from nine to thirteen years (for sedition, among other offences), banned from public office and disqualified from standing for election for a period equal to their prison sentence. The applicants' convictions form the subject matter of separate applications to the Court.

On 23 June 2021 they were released after being granted a pardon.

Complaints

All the applicants relied on Article 3 (right to free elections) of Protocol No. 1 to the Convention and Article 18 (limitation on use of restrictions on rights) in conjunction with Article 5 (right to liberty and security) and/or Article 3 of Protocol No. 1, complaining, in particular, as follows.

The first applicant alleged that he had been prevented from taking part in the election campaign on account of his pre-trial detention; that he had not been allowed to take part in ordinary parliamentary activities after the elections; that he had not been allowed to attend the plenary sessions of parliament for his investiture as a candidate for the office of President of the *Generalitat*; and that he had been suspended from his office as a member of parliament.

The second applicant complained that the authorities had decided to remand him in custody the day before he was due to attend the investiture session for the sole purpose of preventing him from becoming President of the *Generalitat.* He submitted that the measure had been disproportionate in view of his political rights. Under Article 5 (right to liberty and security), he complained of his pre-trial detention and the time taken to deal with his *amparo* appeal.

The third applicant complained that his application for leave to attend the constitutive plenary sessions of the Catalan Parliament during his pre-trial detention had been rejected.

Procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 25 June, 30 June and 14 October 2020, respectively. The Court found it appropriate to examine them jointly in a single judgment.

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

Kateřina **Šimáčková** (the Czech Republic), *President*,
María **Elósegui** (Spain),
Gilberto **Felici** (San Marino),
Andreas **Zünd** (Switzerland),
Diana **Sârcu** (the Republic of Moldova),
Mykola **Gnatovskyy** (Ukraine),
Vahe **Grigoryan** (Armenia),

and also Victor **Soloveytchik**, *Section Registrar.*

Decision of the Court

Article 3 of Protocol No. 1 (first applicant)

The Court noted that the applicant had been placed in pre-trial detention on account of the risk that he would abscond, reoffend and conceal or destroy evidence. It saw no evidence of unlawfulness or arbitrariness in the factual and legal basis for the applicant's pre-trial detention. In order to guarantee the stability and effectiveness of a democratic system, the State might be required to take specific measures to protect itself. In the present case, the circumstances had been particularly unusual and serious, as the purpose of the proceedings had mainly been to prosecute highly consequential acts which had occurred only a year earlier.

As to the rejection of the applicant's applications for temporary release, the Court found that the seriousness of the offence in question and the social and political context at the relevant time were factors which undoubtedly had to be taken into account in assessing the proportionality of the restrictions, as well as the short period of time which had elapsed between the alleged offences and

the rejection of the applicant's applications. It observed that the reasons given by the domestic courts provided detailed justification for the need to avert the risk of the applicant's absconding and reoffending. It also noted that the courts had taken care to limit any interference with the applicant's rights of representation by affording him the opportunity to vote by proxy during parliamentary sittings so as to preserve the essential content of the right to sit in Parliament. This measure had ensured respect for the distribution of votes in Parliament as decided by the citizens when exercising their right to vote.

Regarding the rejection of the applicant's applications for leave to attend the investiture session – as a candidate for the office of President of the *Generalitat* – the Court found that, in view of the events of 20 and 21 September 2017 and the extent of the applicant's responsibility for them, it had not been unreasonable to consider that his transfer to the seat of Parliament had been liable to caused fresh incidents of a certain intensity.

As to the applicant's automatic suspension from his office as a member of parliament when his indictment had become final (on 9 July 2018), the Court noted that the suspension – provided for in Article 384 bis of the Code of Criminal Procedure – had been imposed following individualised review of the applicant's situation by two courts. It also noted that this was a temporary measure, which could be extended only so long as the conditions for the applicant's indictment and pre-trial detention were met. Moreover, the provision in question had already been in force when the applicant had stood for election and neither he nor his constituents had been surprised by its enforcement.

In conclusion, the Court found that the domestic authorities had weighed up the various interests at stake in a manner that could not be characterised as arbitrary, and without interfering with the free expression of the opinion of the people. The first applicant's pre-trial detention, the rejection of his applications for temporary release and his suspension from his office as a member of parliament had thus not been incompatible with the very essence of his right under Article 3 of Protocol No. 1 to be elected and to sit in Parliament. There had therefore been no violation of that provision.

Article 3 of Protocol No. 1 (second applicant)

The Court noted that the applicant had been placed in pre-trial detention on the basis of a reasonable suspicion in support of the charges against him and after taking into account the proven risk that he might abscond and reoffend.

It found that the judicial authorities had effectively taken into account the fact that the applicant was not only a member of parliament but also a candidate for the office of President of the *Generalitat*, whose performance of his parliamentary duties called for a high level of protection.

It noted that the reasons why the imposition of an alternative measure to detention would have been insufficient in the applicant's particular case had been explained by the domestic courts, which had provided specific and individualised reasoning in that regard.

It observed that, in reviewing the applicant's pre-trial detention, the domestic courts had weighed up the issues from the standpoint of Article 3 of Protocol No. 1 when ruling on the lawfulness of his initial and continued pre-trial detention.

Accordingly, the Court concluded that there had been no violation of Article 3 of Protocol No. 1.

Article 3 of Protocol No. 1 (third applicant)

The Court pointed out that the above considerations concerning the first and second applicants also applied to the third applicant and were sufficient for it to conclude that there had been no violation of Article 3 of Protocol No. 1.

Article 5 § 1 (second applicant)

The Court observed that the charges against the second applicant had specifically concerned unconstitutional, secessionist acts committed in his capacity as an elected representative and that the courts had justified his placement in pre-trial detention on the ground that there was a risk that he would reoffend. It found that the evidence before it did not support the conclusion that the order placing the applicant in pre-trial detention had been arbitrary and had been made for the sole purpose of preventing him from taking up the office of President of the *Generalitat*. It considered that the domestic courts had provided "relevant" and "sufficient" reasons for their finding that the pre-trial detention ordered on 23 March 2018 was based on a reasonable suspicion that the applicant had committed a criminal offence and that there had been reasonable grounds to believe that his pre-trial detention was necessary to ensure his presence at the trial and prevent him from reoffending, so as to preserve the constitutional order. The second applicant's pre-trial detention had therefore not entailed a breach of Article 5 § 1 (c).

Article 5 § 4 (second applicant)

Having regard, firstly, to the fact that the lawfulness of the applicant's detention had been thoroughly reviewed by the Supreme Court; secondly, to the limited scope of the Constitutional Court's review in the context of an *amparo* appeal (the Constitutional Court examined only whether the decisions ordering the initial detention and its continuation had been compatible with the fundamental rights guaranteed by the Constitution); and, lastly, to the complexity and crucial importance of the legal issues raised by the cases brought before the Spanish Supreme Court regarding the Catalan independence process, the Court considered that there had been no violation of Article 5 § 4 of the Convention in the present case.

Article 18 (all applicants)

The applicants submitted that the decisions taken during their pre-trial detention had been aimed at silencing them as representatives of a political alternative and intimidating them into abandoning their political activities.

In the Court's view, the aim of preventing acts contrary to the constitutional and democratic order could not be regarded as "political" in the applicants' sense. Absent any other argument or specific evidence (in the legal sense) capable of justifying the applicants' fears, the domestic political context to which they referred could not, by itself, prove that the purpose of their pre-trial detention had been to hinder their participation in political life rather than to ensure that they were brought to justice.

It considered that the applicants had failed to establish convincingly that there had been an ulterior purpose in respect of them. The situation of the political parties of which the applicants were members throughout the judicial proceedings in question supported this interpretation: not only had their activities not been restricted but they had been able to field their lists of candidates for the elections of 21 December 2017 and, after the vote, a coalition of the various pro-independence forces had put forward several candidates for the office of President of the *Generalitat* (including the first and second applicants, who had been in pre-trial detention).

In the Court's view, the various considerations raised by the applicants did not form a sufficiently coherent whole for it to find that their pre-trial detention had pursued a purpose not prescribed by the Convention. There had therefore been no violation of Article 18 of the Convention in conjunction with Article 5 and/or Article 3 of Protocol No. 1.

The judgment is available only in French.

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