

Presence in the Congress of Deputies.

by [Rafa Rubio](#) | Mar 18, 2020 | [Transparency and Open Government](#)

Today Ines Arrimadas, while her fellow spokespersons of the various parliamentary groups were debating with President Sanchez in the Congress of Deputies, chose not to attend the session and uploaded her speech directly to social networks, criticizing the lack of prudence and exemplariness of her twenty colleagues who, representing their respective parliamentary groups, participated in the session in person when they could have done so by electronic means. Beyond the political opportunity of the discussion, which *Ciudadanos*¹ is linking to the value of public exemplarity, and the symbolic convenience of leaving the seat of national sovereignty deserted, we are going to present this issue in the light of the caselaw issued by the Constitutional Court (TC).

[Yesterday we spoke about the exceptional possibility of holding meetings of the Council of Ministers by telematic means](#), which was confirmed by the Constitutional Court. While today we have seen the plenary session of the Congress of Deputies being held in person, despite some requests to do so virtually.



The Constitutional Court has also said something about this:

Although the logic of the S45/2019 on the constitutionality of the virtual meetings of the Council of Ministers, when done in an exceptional and justified manner, could lead us to think about the appropriateness of this request, the application of this logic cannot be done in a direct manner, and in addition to what was pointed out yesterday, it would be interesting to be in accordance with the provisions of the STC 19/2019 (<https://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/25856>).

In this ruling, which resolves the possibility of a possible telematic investiture in the Parliament of Catalonia, the Constitutional Court establishes as a general rule the exercise of parliamentary actions in a face-to-face manner. Similarly to the [yesterday's](#) logic, it seems that in Parliament without the presence of the parliamentarians it would not be possible to deliberate and adopt agreements.

This is established by the Constitution itself in Article 79 EC, which states in its first paragraph that "in order to adopt resolutions, the Chambers must meet in accordance with the regulations and with the attendance of the majority of their members" and its second paragraph that "in order to be valid, these resolutions must be approved by the majority of the members present...".

¹ Ciudadanos is a Spanish center-right political party, whose complete name is Ciudadanos-Partido de la Ciudadanía. It identifies as a centrist, constitutionalist, progressive and liberal party.

This is also reflected in the regulations of the chambers which, in addition to establishing the duty of parliamentarians to attend meetings and the obligation to make speeches "in person and by word of mouth" (70.2), extend this obligation of presence to the members of the government requested by the chambers (art. 110 CE).

In this way the TC points out that "(i)n parliamentary proceedings the interaction between those present is an essential element for the chamber to be able to form its will. The formation of the will of the chambers can only take place through a procedure in which debate and discussion are guaranteed - only this way can political pluralism and the principle of democracy be made effective - and for this it is essential that parliamentarians attend the sessions of the chamber".

Hence, the TC concludes that "for the body to adopt agreements, the presence of the parliamentarians in the chamber is necessary because it derives from its own constitutional function, since its decisions can only be considered as expressing the general will if they are adopted respecting the essential formal requirements that guarantee the correct formation of the will of the assembly and one of these requirements is, as just pointed out, that parliamentary actions are, as a general rule, carried out in person." STC 19/2019 FJ 4 A b)

And always in accordance with the Court, the security of the deputies and the symbolic function of the chamber would be added to this; being "the only place where the immaterial subject that is the people is present before the citizens as a unit of allocation and the centrality of this institution is evident".

In any case, this presence, which "guarantees that aspects can be taken into consideration that can only be perceived through personal contact", admits exceptions established in Article 82.3 of the Rules of Procedure allowing for absentee voting "in exceptional circumstances or in cases of force majeure" (pregnancy, maternity, paternity or serious illness), although it limits this exception to "plenary sessions in those voting procedures that, because they cannot be fragmented or modified, it is foreseeable how and when they will be carried out". In addition, this vote should comply with a series of guarantees that focus on the issuing of the vote through a digital certificate (which can be done prior to the parliamentary debate), which is in the hands of the Presidency before the vote and which the verification of the vote through a call from an official of the chamber.

In this way, and although it is clear that attendance is a key element of parliamentary procedure in the event of voting, in my opinion there is no doubt that, in exceptional cases such as the current one, the voting can be carried out mainly by telematic means (and this seems to have been foreseen by Congress for the validation of the RDLs² approved in the last few days, in next Wednesday's session).

The question arises as to whether, as *Ciudadanos* has suggested, in addition to carrying out the telematic vote, these means can also be used for discussion such as those made today, to inform and discuss the declaration of the State of Emergency (procedure established by the Constitution, art. 116), or for the obligatory presentation of the measures to be voted on in the next session.

In this respect, the TC considers that "however advanced the telematic means may be, a telematic appearance is not equivalent to an appearance in person". According to this doctrine, admitting telematic interventions would make the necessary interaction difficult, would affect the "fluidity and spontaneity" of the debate, would make it difficult for the participants in the session to perceive everything that happens, especially with regard to the participants who, for example, could resort to the use of external support that is not permitted and that could affect not only the form of the discussion

² Royal Legislative Decree.

but also its content. It concluded that "all these circumstances may influence the development of the parliamentary session and, ultimately, on the formation of the will of the House". STC 19/2019 FJ 4 B) b

Hence, in my opinion, even in times of emergency, presence is a necessary component in parliamentarianism, at least as far as the speakers are concerned, to the extent that if this is not the case, and in accordance with existing case law, the "unconstitutionality of the decision could be determined if the formality that is dispensed with is a necessary element for the chamber to be able to adequately form its will", something that this Court has confirmed not only for the legislative procedure but also for any other parliamentary procedure through which the chamber exercises its functions.

Representation (a manifestation of the fundamental right to political participation recognized by Article 23 of the CE), in order to be real, requires procedure and, as the Court has pointed out on other occasions, "parliamentary democracy does not exhaust itself, certainly, in forms and procedures, but respect for both is, without a doubt, among its inexcusable presuppositions" [SSTC 109/2016, 7th June, FJ 5 c); 114/2017, 17 October, FJ 6, and 27/2018, 5th March].