

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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SPAIN: ANALYSIS OF THE SUPREME COURT'S RULING IN THE CASE OF CATALAN LEADERS

Amnesty International monitored the proceedings against 12 Catalan leaders in relation to the events that took place in Catalonia in the fall of 2017 around the referendum on [1 October](#). On 14 October 2019, the Supreme Court's Judicial Chamber for Criminal Cases handed down its verdict in Special Case 3/20907/2017 and sentenced seven high-ranking Catalan officials—including six former members of Catalonia's Govern de la Generalitat, the ex-president of Catalonia's Parlament, and two leaders of civil society organizations—to between nine and 13 years in prison and disqualification from holding public office for the crime of sedition. Another three former members of the Govern were convicted of the crime of disobedience and sentenced to a fine and disqualification from holding public office.

After monitoring the trial and thoroughly reviewing the judgment, Amnesty International expresses its concern about the definition of the crime of sedition in Spanish law and the interpretation of the same by the Supreme Court. Amnesty International believes that this interpretation contravenes the principle of legality and permits the imposition of disproportionate restrictions on conduct that—though perhaps would involve breaking a law—would still be protected under the rights to freedom of expression and peaceful assembly.

In particular, Amnesty International believes that the conviction of the members of civil society Jordi Sànchez, President of the Catalan National Assembly, and Jordi Cuixart, President of the Òmnium Cultural, represents an excessive and disproportionate restriction on the peaceful exercise of their human rights. Further, Amnesty International is concerned about the impact this application of the crime of sedition may have on the exercise of the rights to freedom of expression and peaceful assembly as well as its possible chilling effect on the exercise of such rights in the future.

FAIR TRIAL GUARANTEES DURING THE JUDICIAL PROCEEDING

Amnesty International observed the trial's 52 court sessions held between 12 February and 12 June 2019, and analyzed the principal documents in the case. Amnesty International has also analyzed various allegations presented by the defense of violations of fair trial guarantees. These include allegations of a lack of access to certain documents necessary to prepare a defense and the failure of the court to weigh the declarations of witnesses for the prosecution against documentary evidence, from the standpoint of Article 6 of the European Convention on Human Rights and Article 14 of the International Covenant on Civil and Political Rights.

Amnesty International believes that—although some of these questions raised concern during the proceeding—the Court appeared to counterbalance the limitations presented in the case in its treatment of the evidence in the conviction. According to the case law of the European Court of Human Rights (ECHR), a trial is considered as fair depending on the totality of the circumstances surrounding the trial and not based on any single factor.^[1]

Based on these reasons, and following Amnesty International's analysis of the documents that it has had access to and the observation of the totality of the case, Amnesty International has not found reason to conclude that the legal proceedings against the 12 Catalan leaders violated the right to a fair trial.

[1] ECHR, *Ibrahim et al. v United Kingdom*, cases nos. 50541/08, 50571/08, 50573/08 and 40351/09, decision of 13 September 2016, paragraphs 250-251.

However, Amnesty International shares the concern expressed by the Supreme Court regarding the statements of certain authorities who, by virtue of the offices they held at the time, may have violated the right to the presumption of innocence of the accused when they considered them guilty before the trial began, although these statements do not seem to have affected the legal proceedings.

THE CRIME OF SEDITION AND THE IMPOSITION OF UNDUE RESTRICTIONS ON THE RIGHTS TO FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY

After analyzing the definition of the crime of sedition in Article 544 of the Criminal Code^[2] and the Supreme Court's interpretation of the same, Amnesty International believes that the crime of sedition is vaguely defined, in contravention of the principle of legality as described in Article 7 of the European Convention on Human Rights. Further, the Supreme Court's interpretation is especially important in this case because this is the first time that the crime of sedition has been applied under the Criminal Code of 1995.

The principle of legality requires all criminal conduct to be clearly defined and its definitions to be accessible and foreseeable. Its definitions are foreseeable if people can reasonably understand what actions will result in criminal responsibility and what sentences may be handed down for those actions.^[3] Although the courts have a certain flexibility to interpret legal standards for criminal offences, their interpretation must also be reasonable and foreseeable and must adhere to the wording, read in its context, and be reasonable.^[4]

The lack of clarity around the crime of sedition in Spanish law permits the imposition of undue restrictions on the rights to freedom of expression and peaceful assembly by criminalizing a broad range of non-violent direct actions that are protected under international human rights law. In contrast with other crimes against public order (such as assault or attacks against public order), sedition does not explicitly require the use of violence or the threat of violence, but simply actions undertaken "by force or outside of legal channels".^[5] This could lead to the criminalization of a broad range of peaceful actions, including the conscious and deliberate violation of a law to protest or express political or social dissent.

As several international human rights mechanisms like the Organization for Security and Cooperation in Europe (OSCE) and the ECHR have stated, non-violent direct action, including acts of civil disobedience, are protected under the rights to freedom of expression and peaceful assembly, even when they imply breaking a law, as long as they are undertaken peacefully.^[6]

International human rights law allows the exercise of the rights to freedom of expression and peaceful assembly to be restricted to protect certain public interests (national security, public order, the protection of public health or morals, or the rights and freedoms of others), but these restrictions are only admissible if they are adequately established by law, and demonstrably necessary and proportionate to achieve a legitimate aim.^[7] Any restriction that does not adhere to these three requirements constitutes a violation of this rights.

Further, according to international human rights standards, demonstrations do not lose their peaceful character when participants engage in passive resistance, if an illegal act is committed or if some participants engage in violence.^[8] In this sense, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has emphasized that, due to the special character of the right to freedom of peaceful assembly, "[t]olerance of others,

[2] Those guilty of sedition are those who, without being subject to the crime of rebellion, rise up publicly and tumultuously to obstruct, by force or outside of legal channels, the application of the law or the legitimate exercise by any authority, official body, or public official of their duties or the execution of their agreements, or the execution of administrative or judicial resolutions.

[3] ECHR, *Cantoni v Francia*, case no. 17862/91, decision of 15 November 1996, paragraph 29.

[4] ECHR, *Jorgic v Alemania*, case no. 74613/01, decision of 12 July 2007, paragraphs 104-108.

[5] Article 544 of the Criminal Code.

[6] Venice Commission, OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, 3rd edition, 2019, paragraph 11. Available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)017-e)

[7] See Article 21 of ICCPR and Article 11.2 of the European Convention.

[8] OSCE / ODIHR. Guidelines on Freedom of Peaceful Assembly, second edition; paragraphs 25, 26, 28; ECHR, *Chernega and others v Ukraine*, case no. 74768/10, decision of 18 de junio de 2019, paragraphs 264-267.

pluralism and broadmindedness must be harnessed. As stated previously, it is not necessary to agree with what people do, but as long as it is done peacefully, and does not incite violence and hatred, it should be allowed.”^[9]

Given all of this, Amnesty International does not share the Court’s opinion that “the actions on the days of 20 September and 1 October 2017 were far from peaceful and legitimate demonstrations of protest.”^[10] The Court holds that certain violent actions—none of which have been directly attributed to the defendants—were proven to have occurred, but did not base its conviction on these actions. Rather, the ruling affirms that violence is not necessary to meet the legal standard for sedition.^[11]

According to the ruling, the proven facts meet the legal requirements of the crime of sedition for the very “announcement [to the security forces] by the congregated persons of a determined attitude of opposition to allow them to act, including through means of resistance—non-violent resistance, if you will (...)” or for the fact that security forces had to “cease and desist from executing a judicial order that they [were] mandated to enforce due to a clearly expressed attitude of rebellion and opposition to the order’s execution by a group of people that was clearly greater in number.”^[12] The ruling adds that “faced with this massive, generalized and strategically planned uprising, it is impossible to avoid the standard for sedition” even if “an exceptional and singularized opposition would preclude certain factors that could lead us to other offences .”^[13]

Amnesty International considers that the peaceful obstruction of the execution of a judicial order could justify the imposition of certain restrictions on the exercise of the right to freedom of peaceful assembly, but in Amnesty International’s opinion, the Court failed to demonstrate that the application of the crime of sedition and the imposition of criminal punishments of such severity are foreseeable, necessary, and proportionate measures in response to acts that, as the ruling itself recognizes, were eminently peaceful.

Amnesty International is concerned that the gravity of the conduct the defendants were held liable for, as the Court suggests, is determined by the fact that the opposition was massive and generalized, since the term “tumultuous” is not clearly and directly related to these criteria. Therefore, defining the limits of the crime of sedition based on the massive or generalized character of these peaceful actions would imply, in practice, a limit on the number of people who can simultaneously exercise their right to peaceful assembly, which is contrary to international human rights law.

In sum, Amnesty International is concerned that the sentences handed down to both members of civil society and public officials are based on the vaguely defined and broadly interpreted crime of sedition. Moreover, this could lead to further criminalization of actions directly related to the peaceful exercise of the rights to freedom of expression and peaceful assembly.

Amnesty International therefore urges Spanish authorities to ensure that offences in the Criminal Code that regulate crimes that may be committed during demonstrations or protests clearly distinguish between violent behaviour (which are excluded from the protection of the right to freedom of assembly) and peaceful behaviour that can be restricted, provided that such restrictions are duly defined by law, and are necessary and proportionate to a legitimate aim. Amnesty International specifically calls on Congress to substantially review the legal definition of sedition to guarantee that it does not unduly criminalize the exercise of the rights to freedom of expression and peaceful assembly or impose disproportionate punishments for acts of peaceful civil disobedience.

JORDI SÀNCHEZ AND JORDI CUIXART: THE APPLICATION OF THE CRIME OF SEDITION IS AN EXCESSIVE AND DISPROPORTIONATE RESTRICTION OF THEIR RIGHTS TO FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY.

Amnesty International condemns the decision of Spanish authorities to try and convict the members of civil society Jordi Sànchez, President of the Catalan National Assembly, and Jordi Cuixart, President of the Òmnium Cultural, for

[9] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (2014), UN Doc. A/HRC/26/29, paragraph 31.

[10] Page 284.

[11] Page 280.

[12] Page 283.

[13] Page 283.

the crime of sedition because it constitutes an excessive and disproportionate restriction on their rights to freedom of expression and peaceful assembly.

As private citizens and as presidents of civil society organizations, Spanish authorities have an obligation to guarantee their right to express dissenting opinions regarding the decision of the Constitutional Court that prohibited carrying out the referendum and to organize peaceful assemblies to support the referendum and Catalan independence, provided they do not use violence or incite violence or discrimination.

According to the facts laid out in the ruling, Jordi Sànchez and Jordi Cuixart called the public to gather on 20 September 2017 before the Conselleria de Economia, where legally ordered searches were being carried out. They led the crowd with a series of messages calling for the defense of institutions and permanent social mobilization.^[14] Regarding 1 October, both leaders encouraged other individuals to occupy voting centers in order to prevent the police from acting.^[15] Regarding Jordi Sànchez, the ruling states that on 1 October he “called for the occupation of the centers in order to obstruct the execution of the orders that the Mossos were required to carry out.” The ruling does not specify Sànchez’s exact words, and states that he encouraged people to “protect the count” and engage in “non-violent resistance.”^[16] Regarding Jordi Cuixart, the ruling considers messages like “protect the sites” or “defend the polls” as calls “to ‘use force or resistance against’ the police.”^[17] Amnesty International is of the opinion that none of the messages attributed to Jordi Sànchez and Jordi Cuixart can be considered as a direct incitement to violence, as has been recognized by the Court.^[18]

Amnesty International reiterates that non-violent direct action, including acts of civil disobedience, are protected by the rights to freedom of expression and peaceful assembly. Therefore, restrictions on these activities must also meet the requirements established by international human rights law. Specifically, these must be provided by law, and be necessary and proportional to a legitimate aim. The OSCE and the Council of Europe, through the Venice Commission, have specifically sustained that the State’s response in cases of civil disobedience in which participants in a demonstration intentionally break a law must be proportional.^[19]

Amnesty International believes that in cases of civil disobedience in which individuals deliberately and for reasons of conscience break an ordinary law that proscribes internationally recognized crimes, authorities must not respond by accusing the individuals of committing serious offences that are not justified by their actions, like the crime of sedition. The presentation of excessively severe accusations that are not proportionate to the nature of the criminal act committed during acts of civil disobedience leads to undue restrictions on the rights of freedom of expression and peaceful assembly.

Therefore, Amnesty International urges the authorities to ensure that Jordi Sànchez and Jordi Cuixart, who have already spent more than two years in prison, are immediately released and to ensure a legal process that permits their convictions for sedition to be quashed because these convictions constitute an excessive and disproportionate punishment for the exercise of the rights to freedom of expression and peaceful assembly.

THE CONVICTION FOR SEDITION HANDED DOWN TO THE FORMER MEMBERS OF THE GOVERN AND THE PARLIAMENT

Amnesty International recognizes—having repeatedly expressed this view^[20]—that the former members of the Govern and the Parlament may have committed crimes that can be legitimately prosecuted by virtue of the public offices they held at the time. In this sense, it is important to note that the judgment attributes criminal responsibility to them for actions that are not protected by the exercise of their rights to freedom of expression and peaceful assembly, and

[14] Pages 43, 45, 46, 385.

[15] Page 49.

[16] Page 382.

[17] Page 393.

[18] Pages 380, 390.

[19] Venice Commission, OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, 3rd edition, 2019, paragraph 11. Available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)017-e)

[20] See: <https://www.amnesty.org/en/documents/eur41/7473/2017/en/>

therefore these could be legitimately punished in conformity with international human rights law and standards, without being incumbent on Amnesty International to determine what kind of punishment should be imposed for these actions.

However, Amnesty International is concerned about the conviction for the crime of sedition imposed on the former members of the Govern and the Parlament because it is based on a vaguely defined crime and its broad interpretation by the Court, which violates the principle of legality.

Amnesty International emphasizes that respect for the principle of legality is an autonomous human right that is not contingent upon whether the definition or the interpretation of the crime implies the violation of other rights. Therefore, authorities have an obligation under international human rights law to provide an adequate remedy to redress the violation of this right.

Therefore, Amnesty International urges authorities to ensure that, in the course of eventual legal remedies available to those convicted for the crime of sedition, there is due consideration given to the violation of the principle of legality resulting from a conviction for a crime whose definition and interpretation contravenes international human rights law. In particular, Amnesty International calls on the representatives of the Ministerio Fiscal of the Constitutional Court to, in the exercise of the functions granted to them by law in the 'amparo' process, adopt a position that defends and upholds the principle of legality in accordance with international human rights standards.

POSSIBLE CHILLING EFFECT

Finally, Amnesty International expresses concern about the possible chilling effect of the imposition of the crime of sedition on actions that result directly from the peaceful exercise of the rights of freedom of expression and peaceful assembly. The vague definition of the crime of sedition, and its interpretation and application by the Supreme Court, creates insecurity and uncertainty regarding the limits of this serious crime.

According to the OSCE and the Council of Europe, the imposition of disproportionately severe punishments for actions carried out in the context of demonstrations can create a chilling effect that leads individuals to refrain from carrying out or attending such events.^[21]

While the judgment indeed imposes a penalty for the crime of sedition to the accused based on their status as authorities or "leaders,"^[22] it does not explicitly rule out similar applications of this crime to other individuals who may have been present during the events of 20 September or 1 October, and rather limits itself to stating that none of them have been subjected to criminal charges.^[23] However, the conviction does not mention the fact that the Criminal Code contemplates a sentence between 4 to 8 years in prison for individuals found guilty of sedition who are not leaders or authorities and their actions of other individuals could indeed fall under this criminal offence.

Additionally, in order to define the limits of the crime of sedition and other less serious crimes, the Court stated that the crime of sedition was applicable in this case only because it related to "a massive, generalized, and strategically planned uprising."^[24] While according to the Court this interpretation would permit "the exclusion of sedition" in cases of "exceptional and singular opposition", Amnesty International considers that the lack of specificity of these limits could lead to the arbitrary application of this crime by various authorities.

Amnesty International believes that an interpretation that allows non-violent direct action, including acts of civil disobedience, to be considered a crime as serious as sedition carries the risk that individuals may stop participating in peaceful demonstrations out of fear of long prison sentences even when such participation is non-violent.

CONCLUSIONS AND RECOMMENDATIONS:

[21] Venice Commission, OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, 3rd edition, 2019, paragraph. 222.

[22] Pages 477-481.

[23] Pages 240, 245.

[24] Pages 283.

Amnesty International believes that the crime of sedition and the Supreme Court's interpretation of it infringes on the principle of legality and further allows the criminalization of actions related to the exercise of the rights to freedom of expression and peaceful assembly.

In the cases of Jordi Sànchez and Jordi Cuixart, Amnesty International believes that their conviction for the crime of sedition constitutes an excessive and disproportionate restriction of their rights to freedom of expression and peaceful assembly. Likewise, Amnesty International is concerned about the conviction for the crime of sedition handed down to the former members of the Govern and Parlament because it is based on a broad interpretation of this offence.

Further, the organization is concerned about the possible chilling effect that the application and interpretation of the crime of sedition may have on the exercise of the rights to freedom of expression and peaceful assembly.

For these reasons, Amnesty International recommends the Spanish authorities to:

- Substantially review the legal definition of the crime of sedition to guarantee that it does not unduly criminalize acts of peaceful civil disobedience or impose disproportionate punishments for actions related to the exercise of the rights to freedom of expression and peaceful assembly.
- Ensure that Jordi Sànchez and Jordi Cuixart are immediately released and guarantee a process that allows for their conviction on the crime of sedition to be quashed since this is an excessive and disproportionate punishment for actions that resulted from the exercise of the rights to freedom of expression and peaceful assembly.
- Ensure that, in the course of eventual legal remedies available to those convicted for the crime of sedition, there is due consideration given to the violation of the principle of legality resulting from a conviction for a crime whose definition and interpretation contravenes international human rights law. In particular, Amnesty International calls on the representatives of the Ministerio Fiscal of the Constitutional Court to, in the exercise of the functions granted to them by law in the 'amparo' process, adopt a position that defends and upholds the principle of legality in accordance with international human rights standards.