

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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BELGIUM/SPAIN: PROTECT VALTÒNYC'S FREEDOM OF EXPRESSION

Belgium's Constitutional Court is expected to rule on whether a 19th century Belgian law criminalising insults to the King is in line with domestic and international human rights law. The Belgian Constitutional Court's assessment will have important consequences in proceedings against Josep Arenas Beltran, a Spanish rapper better known by his stage-name Valtònc who is facing potential extradition from Belgium to Spain.

As the court conducts its assessment, Amnesty International takes this opportunity to reiterate its calls on Belgian and Spanish Parliaments to reform these provisions and bring their laws in line with human rights standards. Amnesty International is of the view that laws criminalizing insults to the Crown are an unlawful restriction of the right to freedom of expression.

Amnesty International believes that the criminal prosecution and conviction against Valtònc in Spain is an unlawful restriction of his right to freedom of expression. Amnesty International emphasizes that despite Valtònc's songs being considered by some as scandalous and offensive, his speech is protected by the right to freedom of expression; any limitations on this right must be indeed construed very restrictively.

Amnesty international urges the Spanish authorities to withdraw the European Arrest Warrant against Valtònc, and the Belgian government to comply with its human rights obligations by not facilitating the transfer of Valtònc to Spain where he will likely be imprisoned solely for having exercised his right to freedom of expression.

CONVICTED FOR RAPPING

Valtònc was first arrested in Spain in 2012. The then 18-year old rap-musician from Mallorca was put on trial for the lyrics of some of his songs available on YouTube. In 2017, the Audiencia Nacional, the Spanish Court responsible for judging among others terrorism-related crimes, sentenced him to 3,5 years imprisonment for "glorification of terrorism" (article 578 of the Spanish Criminal Code), for making threats (article 169.2 of the Spanish Criminal Code) and for "slander and serious insults to the Crown" (article 490.3 of the Spanish Criminal Code). The Spanish Supreme Court confirmed the conviction in 2018.

Amnesty International believes that the criminal prosecution and conviction against Valtònc is an unlawful restriction of his right to freedom of expression. Amnesty International emphasizes that despite Valtònc's songs being considered by some as scandalous and offensive, his speech is protected by the right to freedom of expression; any limitations on this right must be indeed construed very restrictively. In Amnesty International's opinion, the Supreme Court did not adequately examine several factors which are crucial in order to decide whether a speech could be considered direct incitement to violence. These factors include whether Valtònc made the statements with the deliberate intention of encouraging others to commit a criminal act, if there was a reasonable likelihood that this act would be carried out, and if there is a clear link between the declarations and a potential violent act.¹

EXTRADITION PROCEEDINGS

Valtònc did not present himself to prison in Spain to start serving his sentence but fled to Belgium. Subsequently, the Audiencia Nacional in Spain issued a European arrest warrant and has since been seeking Valtònc's extradition from Belgium. On 17 September 2018, the trial chamber of the (Belgian) Ghent court of first instance rejected the Spanish extradition request. The Belgian public prosecutor appealed the decision and the Court of Appeals is now seized on the matter.

¹ Principle 6 of Article 19, *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, 1 October 1995, available at: <https://www.refworld.org/docid/4653fa1f2.html> [accessed 9 March 2021]

Belgium's [law on the European Arrest Warrant](#) retains the condition of dual criminality ([article 5§1](#)) for the charges Valtònyc was convicted for. This means that if there are no corresponding offences in Belgian law to the ones in the Spanish arrest warrant, the extradition request would be denied.

The Court of First Instance of Ghent ruled that Belgium's criminal law has no offence that criminalizes "making threats" without demanding a sum of money or imposing any other condition (169.2 of the Spanish Criminal code), nor does Belgium have a criminal provision on "glorification of terrorism" (art. 578 of the Spanish Criminal Code).² On the latter charge, debate about whether the terrorism related infraction should be exempt from the criterion of double criminality, as provided in article 2.2 of the EU's Framework Decision on the arrest warrant³ (or the corresponding article 5§2 of Belgium's domestic law), was put to rest by the European Court of Justice.⁴

As a result, the charge of "slander and serious insults to the Crown", for which Valtònyc was sentenced to one-year imprisonment, is crucial for the Belgian Court of Appeals to decide on whether the extradition would be in line with Belgium's laws and obligations.

The Belgian public prosecutor argues that the law of 6 April 1847 is a suitable basis to satisfy the criterion of double criminality and that it can serve as a basis for allowing the extradition. The law stipulates that insults to the King can be punished with up to three years imprisonment.⁵ On 15 September 2020, the Court of Appeal of Ghent referred a preliminary question to Belgium's Constitutional Court asking whether this rarely used legal provision from 1847 is in line with Belgium's obligations on freedom of expression as protected by Belgium's constitution and by European and international human rights law. The Constitutional Court is still making this determination.

INTERNATIONAL LAW AND LÈSE-MAJESTÉ LAWS

The right to freedom of expression is "applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population."⁶ As the [UN Human Rights Committee](#), the body established to oversee the implementation of the International Covenant on Civil and Political Rights, has stated: "[R]estrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected."⁷ The protection of a monarch from insult cannot be considered a legitimate protective function.

Belgium's law of 6 April 1847 does not conform to these standards. The law restricts freedom of expression in an unnecessary way and provides a special protected status to public figures (including the King and the members of the Royal Family) which is unwarranted.

UN Experts reasserted in February 2021 that "lèse-majesté laws have no place in a democratic country" and that "under international human rights law, public figures, including those exercising the highest political authority, such as heads of State, are legitimately subject to criticism. The fact that some forms of expression may be considered offensive or shocking to a public figure is not sufficient to justify the imposition of such severe penalties."

The European Court of Human Rights similarly has repeatedly held that "conferring special status on heads of states, shielding them from criticism solely on account of their function or status, irrespective of whether the criticism is warranted" inhibits freedom of expression without meeting any "pressing social need" and that "such a privilege exceeds what is necessary for that objective to be attained."⁸

² Amnesty International has found that laws punishing the "glorification" or "apology" of terrorism also constitute an unlawful restriction of the right to freedom of expression. For more information: <https://www.amnesty.org/en/documents/eur41/7924/2018/en/>

³ [2002/584/JHA](#): Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision

⁴ EU Court of Justice - Case C-717/18 - [Judgment of the Court](#) (Grand Chamber) - 3 March 2020

⁵ The law also applies to the Royal Family.

⁶ ECtHR. *Handyside v the United Kingdom*, No. 5493/72, 7 December 1976, para 49

⁷ UN Human Rights Committee, General Comment No. 34, UN Doc. CCPR/C/GC/34 (2011), para. 34.

⁸ ECtHR - *AFFAIRE COLOMBANI ET AUTRES c. France* (Requête no 51279/99) – see also : *AFFAIRE ARTUN ET GÜVENER c. TURQUIE* (Requête no 75510/01)

Moreover, the European Court has issued four judgements ruling that Spain has violated the European Convention on Human Rights by imposing penalties which constituted a disproportionate interference into the right to freedom of expression, on the grounds of crimes relating to defamation of public officials, two of which specifically related to the crime of insults to the Crown.⁹

Amnesty International considers that the use of defamation laws with the purpose or effect of inhibiting legitimate criticism of government or public officials violates the right to freedom of expression. Amnesty International opposes laws prohibiting insult or disrespect of heads of state or public figures, the military or other public institutions or flags or symbols (such as *lèse majesté* and *desacato* laws). The use of terrorism related offences in this way further undermines freedom of expression and has a notable chilling effect.

CONCLUSION

Belgium and Spain should bring their criminal laws in line with international human rights standards and drop provisions that disproportionately restrict freedom of expression by conferring special protection from criticism to the King and other public figures.

The Belgian state should also ensure it lives up to its human rights obligations by not facilitating the transfer of Valtònc to Spain where he will likely be imprisoned solely for having exercised his right to freedom of expression. Should Belgium fail to do so the result may be a violation of the principle of non-refoulement.

Amnesty International calls on Spain to withdraw the European Arrest Warrant against Valtònc, to repeal the crimes of “glorifying of terrorism” and “insults to the Crown” from the Criminal Code, and to refrain from criminalizing forms of speech other than those encouraging others to commit a recognizable criminal act with the intent to incite them to commit such an act and with a reasonable likelihood that they would carry it out, and where there is a clear link between the statement and the criminal act.

⁹ ECtHR CASE OTEGI MONDRAGÓN vs. Spain (Application no. 2034/07) and CASE STERN TAULATS AND ROURA CAPELLERA vs. Spain (application No. 51168/15). See also CASE JIMENEZ LOS SANTOS vs. Spain (53421/10) and CASE OF BENITEZ MORIANA AND IÑIGO FERNANDEZ v. SPAIN (Applications nos. 36537/15 and 36539/15).