

ON THE IMMUNITY WAIVER REQUEST TO THE EUROPEAN PARLIAMENT OF THREE CATALAN MEPs



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A CALL TO DEFEND FUNDAMENTAL RIGHTS IN THE EU

The requests for the waiver of parliamentary immunity by the European Parliament have not cowed Carles Puigdemont, Toni Comín, and Clara Ponsatí, three Catalan pro-independence Members of the European Parliament (MEPs). These requests are placing the European and even the global focus on the Catalan conflict and the violation of fundamental rights by Spain.

In a few weeks, the Members of the European Parliament will vote in a plenary session, by secret ballot, and by simple majority, whether they are to lift their colleagues' immunity, legitimate representatives of one million EU citizens.

Bringing the Catalan political leaders closer to Spanish justice's reach would harm democracy, for the EU, and all MEPs and voters' fundamental rights. It would even be even counterproductive for the Kingdom of Spain: the sooner it is forced to cast off its authoritarian leanings, the better for Spain and for Europe. It should also be reminded that it is incumbent upon the European Union to ensure that all Member States adhere to democratic norms.

Messrs. Junqueras, Puigdemont, Comín, and Ms. Ponsatí are decent people. Peaceful politicians with a democratic trajectory who represent a European national minority. Thanks to their lawsuits, they have extended and clarified all European Parliament members' rights. Their colleagues at the European Parliament now have the chance to send a clear message to Spanish justice and defend the system of democratic rights and values as the basis of the European project.

Political persecution in Spain and the protection of the rights of the MEPs

The Catalan MEPs are facing a vote by a Parliament who, until today, has to a great extent looked away when it comes to Spain's violations of fundamental rights and principles concerning Catalonia. The latest diplomatic fiasco of the EU in Moscow has shown how these double standards erode the legitimacy and international credibility of the EU as a democratic project.

The Spanish Supreme Court that requested for the waivers is the same one that illegally keeps the Catalan vice-president and MEP Oriol Junqueras in jail, as well as six other former members of the Catalan government and two leaders of civil society organizations, as denounced in June 2019 by the UN Working Group on Arbitrary Detention.

Concerning the MEPs, Spain's top court has disobeyed the European rulings since December 19th, 2019. On that day, the European Court of Justice (ECJ) ruled that Catalan VP Oriol Junqueras had been an MEP since June 14th, 2019, and should have enjoyed parliamentary immunity. At the very least, Spain's Supreme Court had contravened European law from that moment when Mr. Junqueras was proclaimed a Member of the European Parliament until January 3rd, 2020.

The immunity granted to MEPs Puigdemont, Comín, and Ponsatí ends at the Pyrenees. Spain's Supreme Court refuses to suspend the European Arrest Warrants (EAW) against them. Its investigating judge Pablo Llarena has even announced that if Mr. Puigdemont enters Spain, he will have him detained. This breaches his democratic right to legal security and blatantly disregards the EU's common justice area.

Another striking legal anomaly is that Spain's Supreme Court has also ignored the High Court of Schleswig-Holstein's judgment in Germany. In a July 2018 sentence on the EAW against President Carles Puigdemont, the German justice ruled that the alleged facts he was charged with did not entail the necessary violence to be deemed a criminal offense. Many in Germany still remember Spain's Supreme Court shocking reaction: scornful tirades, even in unrelated official documents, bordering on insult. Madrid's judicial elite seems to hold a one-way view of what European judicial cooperation means.

The Spanish Supreme Court already clashed against the European courts on other cases, moving the Spanish justice away from European democratic standards. The lack of separation of powers, transparency, and fairness have damaged this court's reputation. The 2020 Rule of Law Report by the European Commission raised attention about Spain's Prosecutor General's independence and about the General Council of the Judiciary -which exercises its functions ad interim since December 2018-.

More recently, in January 2021, Belgium officially rejected Spain's attempt to extradite the former Catalan Minister of Culture Lluís Puig after prosecutors gave up on further legal challenges, following the decision by the Brussels Appeals Court to dismiss the international arrest warrant. Belgian judges believed that, according to the Spanish Law, the Supreme Court was not competent to try him and raised concerns that Puig's presumption of innocence was at risk in Spain. The Public Prosecutor at the Brussels Court of Appeal has communicated the decision to the Spanish Prosecutor Pablo Llarena in a letter that includes a recommendation to investigate whether there is a "risk of violation of fundamental rights."

Despite the sentences of Schleswig-Holstein, the ECJ in Luxembourg, and Brussels, nine peaceful Catalan leaders remain in prison, serving sentences of 9 to 13 years. Their trial was plagued by numerous violations of the right to defence and other fundamental rights, as International Trial Watch reported. In fact, these leaders were subjected to a political trial that should never have taken place.

In this regard, in its opinion of June 2019 on the imprisoned Catalan leaders, the UN Working Group on Arbitrary Detention (WGAD) stated , that the purpose of the criminal charge and the resulting trial to the Catalan civil and political leaders imprisoned is to coerce them on account of the political opinions they have expressed". The WGAD also called on the Spanish authorities to immediately release them, award them reparations, and make legislative amendments to harmonize Spanish laws and practices with their international obligations.

The Working Group also considered the deprivation of freedom to be arbitrary when it is targeted at repressing members of political groups to silence them in their claim for self-determination. Almost two years later, Spain has not yet taken any steps to address this situation, as reported by the Working Group itself in September 2020. In 2019, the Working Group issued 85 opinions on the arrest of 171 people in 42 countries, with Spain being the only European Union member state included in the report. Let us emphasize what this means: a UN body is affirming that there are political prisoners in the EU.

Systemic corruption in the Spanish judicial system and its threats to the rule of law

In late February 2020, daily El Diario.es disclosed that the party *Ciudadanos* (Renew Europe) had secretly paid a monthly salary to Andrés *Betancor*. *Betancor* is a member of the Central Electoral Commission (JEC) that took part and voted in the controversial decisions on Catalonia between 2017 and 2019, including declaring Carles Puigdemont, Toni Comín and Clara Ponsatí ineligible in the May 2019 European election (later overturned by the Constitutional Court) and sending the European Parliament an incomplete list of elected MEPs, excluding most of the Catalan ones. Spain's electoral authority misled the European Parliament into illegally denying them their seats, which has damaged its reputation. Despite being a blatant case of lawfare, the Spanish Supreme Court endorsed this JEC decision.

It is important to remark that Mr. Betancor's son Gabriel is an assistant to Ciudadanos MEP Luis Garicano. Moreover, in September 2020, Ciudadanos MEP Jordi Cañas publicly declared that seeing Messrs. Puigdemont and Comín and Ms. Ponsatí walking freely in the European Parliament offended him and that he wished to see them in prison. Ciudadanos MEP Adrián Vázquez Lázara is unfit to chair the Committee on Legal Affairs of the European Parliament, competent for analysing the immunity waiver request against the Catalan MEPs and raise a proposal on the case to the plenary, especially when it is not the first-time members of this political party lie or twist the law with intent to harm the Catalan exiled leaders.

Spain's Constitutional Court has allegedly applied a particular "strategy" (sic) to Catalans' appeals, including the 3 MEPs in this case and Mr. Oriol Junqueras. It consists of admitting all their appeals to delay their access to the European Court of Human Rights (ECHR) in Strasbourg. If confirmed, this would violate Spain's legal duty to facilitate the access of their citizens to European justice. On the same basis, the Constitutional Court has been delaying sine die all writs of protection requested by the political prisoners, in another breach of their rights. Another case of violation of the rights of the exiled Catalan leaders was committed by the Spanish justice when they denied the participation of their legal defendants during the investigation on the Catalan referendum, according to the EU Court of Justice.

The EAW against the Catalan MEPs and the Spanish Central Election Board's corruption cases may be the Spanish lawfare cases directly connected to European institutions. Nonetheless, these are not the only cases of judiciary partiality, a usual issue in Spanish Courts. This systemic problem is the inheritance of an authoritarian regime that adopted democratic institutions without structural change, audit, or judgment.

The highest echelons of Spanish justice are implementing an agenda of their own, out of the reach of democratic control. They interfere in politics, acting as a player although they lack the votes and the legitimacy to do so. There are many examples, such as fake reports of the paramilitary Guardia Civil or a report by the Interior Ministry on the Barcelona terror attack of August 2017, where the proven relation that the Spanish secret services had with the head of the terror cell is omitted.

There are plenty of legal and political anomalies in Spain unbecoming of an EU country: Spain's National Court declined to investigate the alleged links between Abdelbaki Es Satty, the mastermind of the Barcelona and Cambrils August 2017 terror attacks, and the Spanish secret services. The Spanish Parliament also refuses to investigate these attacks that caused 17 deaths and 152 injured people in Catalonia.

The Spanish Parliament also refuses to investigate former King Juan Carlos. Spanish justice only started investigations about Juan Carlos' alleged corruption scandals -which in the meantime ensnare a large part of his family- after Switzerland launched an inquiry on the now-disgraced royal on suspicions of corruption and money laundering in 2018. Meanwhile, he moved to the UAE in August 2020, where he so far remains.

Neo-Nazis are considered a protected category by Spain's anti-hate legislation, as declared in May 2019 by Spanish Prosecutor General. Jewish communities worldwide are scandalized, and the Simon Wiesenthal Center has even sent a letter of complaint to Pedro Sánchez. Freedom of speech is being limited not only to protect the far-right, but also when criticizing Spanish institutions -especially the Royal Crown, punished under the infamous "Gag Law". Catalan rapper Pablo Hasél was jailed last week for criticizing the Spanish monarchy in his lyrics, sentenced for "glorifying terrorism" and "slandering the Crown". The protests against the Spanish judiciary's politically motivated decisions flared up last week during and after his detention. Pablo Hasél's imprisonment has created a wave of surprise, alarm, and solidarity across Europe and the world, as political representatives and civil society organizations such as Amnesty International are growingly questioning Spain's democratic standards.

During the Covid-19 crisis, a Civil Guard spokesperson also stated in a press conference that they were monitoring all criticism against the government due to its crisis management. All these factors have led to a situation in which less than 50% of the Spanish society trusts in justice's independence.

Prime Minister Pedro Sánchez himself has proposed for referendums to be made illegal in Spain. They were decriminalized in 2005, precisely on the initiative of the Socialist Party. Thus, both the Catalan leaders in prison for holding the referendum and these 3 MEPs subjected to an immunity waiver request have been prosecuted for acts that are not a crime.

The corruption and lack of independence of Spanish Courts have not gone unnoticed by international instances. The GRECO group of the Council of Europe has repeatedly called Spain to solve its persistent lack of judicial independence. So far, with little effect.

The use of lawfare to persecute the Catalan people

The 3 MEPs included in the immunity waiver have had a bail of €4.14 million imposed by the Spanish Court of Auditors. This administrative body reckons this is the amount of public money allegedly spent on the October 2017 referendum. Three other Spanish courts overlap in investigating and cashing in bails for that referendum: €2.1 million, €5.8 million, and up to over €12 million. Not a single invoice sustains any of these alleged expenses.

In March 2020, the Supreme Court also threatened the Catalan prison employees with the crime of prevarication in case of allowing the jailed Catalan leaders a permit due to the Covid-19 pandemic following the recommendations of the UN High Commissioner for Human Rights, Ms. Bachelet. Political prisoner Jordi Cuixart has denounced that he and other Catalan political prisoners spend up to 23 hours a day isolated in their cells. In July 2020, the Spanish Public Prosecutor's Office filed an appeal against their penitentiary regime of semi-freedom.

Tsunami Democràtic, a peaceful civil-disobedience organization, has been investigated for "terrorism". Pedro Sánchez's government has even equalled China and Russia's repression of free speech by blocking the Tsunami app on GitHub in October 2019.

In September 2019, seven Catalan members of the peaceful activism groups "CDR" were arrested and jailed under accusations of terrorism. They were barred from having proper access to their lawyers and were illegally held in solitary confinement. Lies about their secret proceedings were "leaked" with talk of explosives and bombs. Large swaths of the Madrid press and politicians of the major Spanish parties treated them as guilty, including the then-acting President Pedro Sánchez. Three months later, the seven suspects were silently released. There have been neither explanations nor public apologies.

Ms. Tamara Carrasco, a pro-independence activist and a CDR member was acquitted in October 2020 to incite public disorder. This sentence resulted in a thirty-month ordeal after initially being accused of rebellion and terrorism. For over a year, Tamara Carrasco was judicially banned from leaving her suburban town in Catalonia. Tamara is not the only victim of reprisal, as up to 3000 pro-independence activists and representatives are being prosecuted.

In the summer of 2020, it was disclosed that the Speaker of the Catalan parliament and other top Catalan pro-independence leaders were targeted by government-grade spyware. It is the first time that the Israeli spyware Pegasus has been used to spy on politicians in Europe, with prominent Catalan pro-independence elected representatives being its victims.

Mr. Gonzalo Boye, the lawyer of the persecuted Catalan MEPs, is suffering judicial harassment himself, which includes the violation of his fundamental rights to a natural judge and equality before the law. Contributing to

the atmosphere of an authoritarian country, unidentified persons raided his law office in Madrid twice. The encroachment on Boye and the interception of his private communications also violates his clients' right to defence. These violations have been denounced to the UN's Special Rapporteur on the independence of judges and lawyers.

Anyone close to Mr. Puigdemont may also be subjected to *lawfare*:

- Spanish military police arrested 21 Catalan businessmen who have teamed up with him in October 2020 for alleged misuse of public funds and money laundering after tapping their phones for over a year without any evidence of wrongdoing whatsoever. All their cell phones, computers, and even notebooks were confiscated. Hours later, the same Spanish judge said a Russian group created during Mikhail Gorbachev's era had offered "support" to Carles Puigdemont in 2017, including sending 10,000 Russian soldiers to the region and money to pay off Catalonia's debts, if he declared independence. This is completely preposterous and has even created a diplomatic row between Russia and Spain. Interestingly, the Spanish military police operation received the name "Volhov," a river near a battlefield where the Nazis fought the Soviet army with the help of Spanish dictator Franco's División Azul in 1941.
- Two Catalan policemen protecting Mr. Puigdemont during their leave on his trip through Schleswig-Holstein in 2018 have been accused of several crimes associated with that trip. Adding insult to injury, Spanish Premier Pedro Sánchez arbitrarily denies Mr. Puigdemont the public security detail he is legally entitled to. The 130th President of Catalonia has received numerous death threats ever since his exile in 2017. The trial for rebellion and sedition of the Catalan police's senior commanders in 2017 began in January 2020.
- Mr. Josep Lluís Alay, director of Mr. Puigdemont's office in Barcelona, has been subjected to two spectacular arrests already and is being persecuted for embezzlement. The item? A highway toll payment of €11. Eleven euros. Mr. Alay, in his turn, has filed suit about the leaking of his private conversations by Spanish authorities and the confiscation of his cell phone on what he considers flimsy grounds.
- Meanwhile, €350,000 of under-the-table payments by Spain's People's Party to a certain "M. Rajoy" remain uninvestigated. Who might M. Rajoy be? Most do not doubt he is former Prime Minister Mariano Rajoy.

Another lawfare case involves Mr. Josep Lluís Trapero, the former Chief of the Catalan Police, who was subjected to trial for rebellion, a crime his political superiors at the Catalan government was acquitted of in 2018. Why wasn't the accusation of "rebellion" against a subordinate not withdrawn? The answer is simple: This allowed the trial to be held in Madrid instead of Catalonia. Some international press has captured the essence of the Trapero case very well: he was tried for abstaining from beating up Catalan voters as the Spanish security forces did. Mr. Trapero is not even for independence. He is just a good policeman, a democratic officer. In contrast, Mr. Pérez de Los Cobos, the Spanish colonel who led the violent repression against the referendum for self-determination, has been accused of torture in the past.

Mr. Trapero was found not guilty in October 2020 by the National Audience court. However, Mr. Joaquim Forn's 10-year conviction, who in 2017 was his boss as Catalan minister of Interior, is final. Spain's Supreme Court condemned him for his alleged manipulation of the police force to realize the referendum and Catalan independence. It is nonsense that Mr. Forn is serving a 10-year sentence for sedition for alleged manipulation of Catalonia's police which another court declares not to have happened!

Finally, we would like to highlight the fact that on September 23rd, 2020, Spain's Supreme Court ousted Mr. Quim Torra as president of Catalonia and fined him €30,000 because he refused to take down from the

presidential palace a sign reading "Freedom for Political Prisoners and Exiles" and yellow ribbons (signalling support for jailed Catalan pro-independence leaders). Spanish authorities decided that Catalonia's top office would be vacant in the midst of the worst health, social and economic crisis since World War II because Mr. Quim Torra used his freedom of expression. In other words, Spain takes criminal reprisals against the president of Catalonia because he dared exercise a fundamental right enshrined on Article 19 of the UN's Universal Declaration of Human Rights.

In January 2020, the same Supreme Court upheld president Torra's disqualification as a Parliament member. An administrative body—in this case, Spain's Electoral Commission—hands out penal sentences. This illegal decision runs against the Statute of Catalonia, the Catalan parliament's rules, and even Spanish electoral law. It makes no difference. Who cares about the rule of law when the goal is to suppress the fundamental rights of the Catalan national minority?

Spain's actions against the Catalan people and its impact on the EU

In 2019 the Council of Europe began an investigation concerning the use of lawfare against public representatives belonging to the Catalan and Kurdish national minorities in Spain and Turkey, respectively. In a similar vein, the UN's Working Group against Arbitrary Detentions (WGAD), Amnesty International, and the World Organisation against Torture, and other organizations have long demanded the immediate release of Catalan leaders who have been imprisoned for over three years.

During the 2020 UN Universal Periodic Review to Spain, numerous violations of fundamental rights related to the Catalan conflict were mentioned. Up to eight-nine stakeholders submitted reports on the state of human rights in Spain. In the 35th session of the review held on January 22nd, 2020, in Geneva, 117 countries intervened, and 22 of them addressed the violations of civil and political rights in Spain during the last five years, namely freedom of expression and freedom of assembly and association. Out of these 22 countries, eight were EU member states (Germany, the Netherlands, Czech Republic, Belgium, Italy, Cyprus, Luxembourg, Austria).

This erosion of the rule of law in Spain and its effects on the whole of the European Union have been condemned by the Belgium Prime Minister Mr. De Croo, who has compared Spain to other states such as Poland and Hungary, calling them to respect the rule of law.

The deterioration of the situation concerning civil and political rights in an EU Member State, combined with EUs inaction, is an issue that erodes the legitimacy of the European integration project, as it directly goes against one of its main foundations: the respect for democracy and fundamental rights enshrined in Article 2 of the Treaty on the European Union.

The longer it takes for the EU institutions and Member States to start pressing Spain to change its behaviour and end its repressive strategy on this conflict, the more severe the internal and external harm for the European Union. In this case, inaction will keep weakening the EU's capacity to project power overseas, and ultimately, the legitimacy, consistency, and international credibility of the European integration project.