Special Case No. 20907/2017

Criminal Chamber of the

Supreme Court

Section 4

Secretary Ms CB

IN COURT

CL, Court Attorney, and Messrs **ORIOL JUNQUERAS I VIES** and **RAÜL ROMEVA i RUEDA**, as stated in the case referenced in the heading, to the fullest extent permitted by law, do STATE:

That we have been summoned by the Court to process the legal characterisation of the facts for which these proceedings have been brought, responding to the notice ordered under Article 652 of the Criminal Procedure Code, and drawing, provisionally and correlatively to those of the Public Ministry, the State Attorney's Office and the private prosecution, the following

C O N C L U S I O N S

ONE. FACTS

The prosecution attributes facts to my clients that are criminally irrelevant and sometimes at variance with what actually occurred. We do not accept the accounts provided in the accusations in Conclusion One of the characterisation documents in all that is not expressly accepted in this document.

The earlier charge and current accusation give a long-winded account of the facts, an extensive description, despite the explicit requirement set out in Article 650 of the Criminal Procedure Code for delimiting offences precisely. This also affects the adversarial principle and forces these defences to inevitably and with the required length, refute the theses set out in the accusations, which we will do through an organised connection of the facts in chapters.

Note, firstly, that this case is an example of the instrumentalisation of criminal proceedings for the prosecution of a movement that peacefully seeks a legitimate political aim in democracy. Its result, therefore, will be to prove the maintenance or derogation of the democratic values on which our neighbouring countries are founded, in accordance with Article 2 of the Treaty on European Union (TEU).

A) A POLITICAL MOVEMENT FOR THE RIGHT TO DECIDE

a) Pro-independence political parties in a democratic setting.

Esquerra Republicana de Catalunya (hereinafter ERC) is a political party founded in 1931 that defines itself in its current party platform as *republican, democratic and left-wing, defender of human rights, the rights of peoples and the environment through the promotion of the defence of the interests of the productive sectors and working classes, institutional transparency and service to citizen*s.

The vicissitudes affecting its representatives throughout history are common knowledge. Francesc Macià, who would become party chairman and President of the Government of Catalonia, was forced into exile in the mid-1920s when the dictatorship of Primo de Rivera was established, although the party had not yet been founded. And Josep Irla, President of the Catalan Parliament and of the Government of Catalonia, and Josep

Tarradellas, President of the Government of Catalonia, were forced into exile due to persecution under Franco's regime after the 1936 coup and the establishment of the dictatorship. And lastly, Lluís Companys, the only president in Europe to be democratically elected, assassinated by fascism. He was shot in 1940, having been arrested by the Gestapo in exile, where he had sought refuge, and handed over to the Spanish State.

Following the legalisation of ERC in 1977 and the approval of the Spanish Constitution in 1978 (SC), the party continued to advocate republican values and the right to self-determination. Although the SC was still in its early years, this political opposition was bolstered by the values advocated by that standard, namely *freedom, justice, equality and political pluralism*.

Some years later, in its Judgment of the Constitutional Court (STC) 48/2003, the Spanish Constitutional Court would coin the phrase that Spanish democracy "is not a militant democracy" because any idea can be defended in it, even one that infringes that same constitutional order.

This appeared to be the consensus of a "new era of freedom" and in this context of political pluralism and apparent respect for ideologies shared by our democratic neighbours, ERC openly defended at least since its 1989 Conference (**30 years ago**) the political aim of achieving Catalonia's independence from Spain and maintains and thus states this aim in Article 2 of its party platform[1], communicated and filed in the Political Parties Register.

For many years, ERC has presented candidates at all elections defending its political goals of pro-independence, campaigning for Catalonia's right to self-determination and focusing its political activity and that of its

[1] DOCUMENT No. 1 ERC Party Platform and filing thereof.

representative on this aim. The party is committed to European federalism and the process of European integration, and obtained the highest number of votes in Catalonia in elections to the European Parliament in 2014.

ERC is a legal party with legitimate political aims that it has defended for decades through its unquestioned public activity. It has more than 200 mayors and more than 2,000 councillors across Catalonia.

The Catalan independence movement had never been a political issue until it gained sufficient support from the people to be a political option for real change, at which point the strategy of the judicial and political persecution of a legal and legitimate ideology was introduced, as we shall see.

b) Oriol Junqueras i Vies and Raül Romeva i Rueda.

ORIOL JUNQUERAS was born in Sant Andreu del Palomar and has a PhD in Modern and Contemporary History from the *Autonomous University of Barcelona*. He has been involved in the political project of ERC for almost ten years.

In 2009, he stood as a candidate for the political party in the European elections and was elected MEP. In 2011, he was elected Chairman of ERC, and remains so to this day.

He has been an MP in the Catalan Parliament since 2012 and remains so today. In January 2016, he was appointed Vice President of the Government of Catalonia and Minister of Economy and Finance.

The career of ORIOL JUNQUERAS i VIES is linked to Europeanism and the defence of republican values. He is well known for his articles on Christian tradition and its values, including the peaceful pursuit of his goals. The term *junquerism* is often used by the media to refer to a **peaceful and inclusive political project**, calling to mind the ideological stance of my client.

RAÜL ROMEVA i RUEDA was born in Madrid and holds a degree in Economics and a PhD in International Relations from the Autonomous University of Barcelona.

He was an MEP from 2004 to 2014 in the electoral coalition Iniciativa per Catalonia-Verds (ICV) and Vice Chairman of the Greens/EFA group in the European Parliament. He played an active role in committees such as LIBE (freedom), FEMM (equality), AFET (Foreign Affairs), PECH (fisheries) and the subcommittees on human rights and disarmament.

In 2015, he was elected MP of the Catalan Parliament with the *Junts pel Sí* coalition and in January 2016 was appointed Minister of Foreign Affairs, Institutional Relations and Transparency. He is currently an MP of the Catalan Parliament.

RAÜL ROMEVA has spent his whole life studying **peace culture** and is a **militant of non-violence** who learned from the objection movements to compulsory military service. A researcher of peace and disarmament at the UNESCO Centre of Catalonia, he coordinated Intermón-Oxfam's **campaigns for disarmament and conflict** prevention. He worked for many years in refugee camps for those fleeing the war in the Balkans and was Director of the UNESCO Office in Sarajevo from 1995-96. He was supervisor of the Organization for Security and Co-operation in Europe (OSCE) for the elections in Bosnia and Herzegovina. He has produced numerous contributions and works on peace culture and conflict resolution.[2]

c) 2010: The Constitutional Court overrules the *Estatut* approved by the citizens and upheld by the Catalan and Spanish parliaments.

Despite their evident political charge, the accusatory theses neglect to

[2] Attached as DOCUMENTS No. 2 and 3 are the CVs of the two defendants.

recount facts that are closely linked to the evolution of the Catalan independence movement and which explain how it developed into a majority political movement.

In March 2006, the Congress of Deputies approved a text of the Statute of Autonomy of Catalonia (EAC) in a political setting in which – albeit with the natural difficulties of any political negotiation – diverging ideologies and parties had managed to produce a viable and far-reaching proposal.

The EAC of 2006 would modify the area of constitutionality that not only obtained the **approval of the Catalan and Spanish legislative chambers** but which also had **majority popular support** as expressed in a referendum, that is, by a mechanism through which a political decision is submitted to the scrutiny of citizens; in other words, the quintessence of the political participation of citizens and their direct involvement in decision-making.

The standard had the backing of 90% of the MPs of the Catalan Parliament and, despite the modifications made and approved by the Spanish chambers, it was validated by **74% of the Catalans** who took part in the referendum.

For some reason, Partido Popular (then in the opposition) launched a campaign to collect signatures against this widely approved standard and diverted the initiative from its legislative course, subjecting the EAC to the control of a Constitutional Court that decided in 2010 to submit the aforementioned law **to serious review.** A Court selected with a clear political bias (some of its members had been Partido Popular activists or MPs) took it upon itself to review the will of the people expressed in the legislative chambers and in a referendum.

At this point, there was talk of growing "dissatisfaction" with how Catalonia

and its political initiatives were being treated. The then President of the Government of Catalonia, José Montilla Aguilera, was one of the politicians to warn of this.[3] There was also criticism[4] of the political instrumentalisation of the Constitutional Court for the purpose of completely denaturalising the legitimate aspirations of the Catalan people.

The EAC that survived the Constitutional Court decision was not accepted as legitimate by the Catalan people and this led to obvious frustration. The day after the judgment was published, over a million Catalans took to the streets under the slogan *Som una nació. Nosaltres Decidim*[5] *(We are a Nation. We decide)* **in a demonstration supported by more than 1,600 institutions** (including political parties and trade unions) led by all living presidents of the Catalan Government and Parliament, including José Montilla, who was serving as President of the Government of Catalonia at that time.

The Constitutional Court thus modified an agreement born out of respect for all avenues and requirements of the Spanish Constitution (SC) and sparked a **crisis of legitimacy** because the legal system of Catalonia was no longer a product of legislation but one imposed by a court.

Ten years after the EAC of 2006, there was still talk of *a Byzantine, tortuous and guerrilla process that had clipped the wings* of the EAC with *a hostile-toned judgment that served to inflame politics in Catalonia, which was teetering on the threshold of the economic crisis*.[6] In that interview, former

[3] See DOCUMENT No. 4: https://elpais.com/diario/2007/11/08/espana/1194476422_850215.html

[4] As did PÉREZ ROYO, shown by DOCUMENT No. 5, which contains the article available at the link https://elpais.com/diario/2007/02/10/espana/1171062012_850215.html

[5] *We are a Nation. We decide*

[6] This news article is attached to DOCUMENT No. 6 and available at the link https://www.lavanguardia.com/politica/20160327/40693985909/catalunya-comunidad-nacional-esa-podria-ser-una-solucion-de-consenso.html

President Rodríguez Zapatero recalled the *inflexible stance of Partido Popular when a plural vision of Spain was suggested* and stated that *the Constitutional Court should be left out of the political resolution of the country's major problems.*

Something had indeed changed in Catalonia because the popular desire for the right to decide was consolidated, organised in popular movements and expressed in various public demonstrations. From then on, each year produced a stronger base of **supporters of a new territorial fit** for Catalonia in Spain, a fit that was overwhelmingly connected to the idea of **creating a new independent State**. For differing reasons, the Catalans saw and still see it as necessary to exercise their right to democratically decide the political future of their country through a referendum on self-determination, demonstrating this to Catalonia's political representatives both in the streets and at the polling stations.

Needless to say, in the different regions of Spain and other European states there are numerous initiatives to support this political cause since being Catalan is clearly not a requirement for upholding the validity of democratic rights and putting forward solutions in politics.

Citizens clamoured for the politicians to find a solution and, obviously, regardless of attempts to criminalise it with accusations, *citizens emerged as a driving force in the politics of the independence process*, as stated later in documents of sovereignist political parties and associations. There is nothing more inspiring and democratic than citizens doing politics.

For neither the political parties nor my clients created this feeling or determination, they simply picked up on it and shared it with the people, adapting their political activity from at least 2012 to make the Catalan Republic a reality, always based on the principles that guided this particular

grass-roots movement: defence of democratic rights, including the right to self-determination, and defence of the principle of democracy by means of a peaceful political strategy aligned with the will of the people and respect for minorities.

This is how the citizens of Catalonia began to mobilise to assert their right to decide their political future, validating this option by the majority in each election, and this is also how the political representatives pledged to respect this desire and popular mandate and convert it to political action.

d) Sovereignty

Following the legitimacy crisis brought about by the Judgment of the Constitutional Court on the EAC, the Catalan political system began its unprecedented transformation parallel to the change taking place in Catalan society towards ever-more sovereignist positions. The ninth parliamentary term proved to be the shortest to date since the Catalan Parliament was dissolved before the end of the second year in order to call elections. The end of that term marked the culmination of an accelerated increase in support for the self-determination argument and while Artur Mas attempted to reach a political agreement with the State government to resolve the conflict (an agreement based on a fiscal pact), President Rajoy's refusal to initiate negotiations of any sort and the increasing mobilisation of citizens made the call for elections inevitable. The meeting between the two leaders was preceded by the first of the big demonstrations coinciding with Catalonia's national day celebrations, *La Diada*, which saw over one and a half million citizens take part in 2012 and led to a series of demonstrations in successive years on that same date of 11 September with more than a million participants each year.

When the *Partido Popular* government closed the door to negotiations

during the debate on the direction of general policy in the Catalan Parliament in October of that year, Artur Mas called an early election. Let us recall the resolution passed during that debate which recognised, inter alia, the right to self-determination of the Catalan people and urged the Catalan Government to hold a popular consultation during the next legislative term to allow *the people of Catalonia to freely and democratically determine their political future*. This resolution had the support of CiU, ERC, ICV and SI, and the abstention of PSC.

It was against this backdrop that elections were held to the Catalan Parliament in 2012. And at these elections it was not only ERC pushing for a consultation, referendum or the right to decide as a way of resolving the political conflict (as had been the case in 2010) but also CiU, ICV and even PSC.

At this point, strategies merged and there was a more or less tacit agreement that any future political scenario would need to be based on a **process of citizen participation** through a referendum, with the desire for this to be agreed with the State.

During this term, the right of the Catalans to decide emerged as a cross-cutting political framework and sole viable and democratic solution following the crisis of confidence precipitated by the EAC Judgment.

Along this line of political action and with these goals – public and known to the Spanish authorities – the Catalan Parliament adopted Resolution 5/X, the Declaration of Sovereignty, which was subsequently annulled by the Constitutional Court.

It was around this time that the Spanish Government made its clearest moves to transfer this markedly political issue to the judiciary. The Spanish

Government abdicated from its responsibilities and sidestepped the issue, encouraging STC 42/2014 with its judicial actions, which marked a turning point in constitutional case-law dealing with Catalan independence.

While up to this point, the pursuit of Catalan independence had been treated as a legitimate political ideology within a "non-militant democracy", the above decision decided to use the courts to put the brakes on politics, stating that the Resolution of the Catalan Parliament *is a polished manifestation of the will of the Chamber* that *despite its political nature, has an undeniable legal effect, since "the law is not limited to what is binding"*.

The Constitutional Court, once again taking centre stage, decided – contrary to all precedents – to annul **purely political statements** of a legislative chamber, giving rise to a new case-law that would be the starting point for all future criminal proceedings against other branches of the State and against political representatives.

The Judge presiding over the Constitutional Court at that time was FP, former activist of *Partido Popular* who was strongly criticised for his disparaging comments on Catalonia and brother of the man who, a few years later, would order the police repression of the referendum of 1 October 2017.

This **new case-law** would be the basis for the subsequent STC 259/2015, destroying the separation of powers, execution of which blocked an entire parliament and, most notably, attacked its highest representative figure: President Carme Forcadell i Lluís. It was thus decided to nullify a troublesome political space whose greatest aspiration would be reduced to a theoretical exercise without the desire for real implementation and, hence, banished from parliamentary debate by order of the Constitutional Court.

e) Representative mandate

As mentioned earlier, the citizens appealed to my clients who, seeing their strategy strengthened at each election, had no choice but to fulfil the mandate of the ballot box and so began to plan and promote the shift towards Catalan independence through their offices and responsibilities.

Thus, the legitimate and legal ideology of pro-independence, crystallised in the configuration of bodies to study the possibilities of increasing shares of self-government and the development of publicly and widely circulated initiatives to make progress in achieving these political goals supported by the majority and which, in all events, had to be aligned with the philosophy that inspired the whole movement: **popular referendum** on any political decision and disconnection from the Spanish Government through **peaceful methods** and **dialogue** between Catalonia and Spain.

The definition of the **right to self-determination** as currently understood (that is, linked to the preservation of peace and conflict resolution, removed from the atavistic understanding of decolonisation) or protection of the **democratic principle** (as argued by the Supreme Court of Canada in transferring to the public authorities the need to address any legitimate and continued political demand despite the absence of a legal provision) are the intellectual foundations that guide the actions of our clients, convinced of the legitimacy of their ideas and political action and, hence, the impossibility of their criminal blame.

In 2014, the determination of Catalonia's political representatives to adopt the path of dialogue led a delegation of MPs (Jordi Turull of CiU, Marta Rovira of ERC and Joan Herrera of ICV) to the Congress of Deputies to request the transfer of the necessary powers to hold a consultation on relations between Catalonia and Spain.

A total of 77% of MPs in the Catalan Parliament had supported the proposal of PSC *to begin talks with the Spanish Government to hold a popular consultation allowing the citizens of Catalonia to decide on their future* (Resolution 17/X).

The negative response to these attempts at dialogue and legitimate requests was one of a long list of negatives that grew ever longer.

However, despite the **repeated refusals** and clear blocking of talks on how to overcome the existing political conflict, my clients stubbornly backed and continue to back investment in sincere political dialogue. This is because the matter at hand is a political one and it was in this context of inescapably political negotiation in which all actions took place until my clients were brought to court in these criminal proceedings.

f) The 9-N popular consultation

On 9 November 2014, following the experiences in Arenys de Munt, a popular consultation on the independence of Catalonia was held. The political and judicial developments of that consultation are widely known, given that it has already been subject to preliminary criminal proceedings, and does not, therefore, merit further consideration.

This enormous peaceful mobilisation of citizens had obvious consequences on Spanish and Catalan politics and was of unquestionable political significance, given that it confirmed that only a referendum could remedy the situation in Catalonia. It also showed the reaction of the Spanish Government to such an expression of the will of citizens: an accusation of disobedience to the politicians behind it.

For the Spanish Government, 9-N showed that politics was facing a unique challenge: *sovereignism* was no longer a theoretical political option but a

majority movement. And it had to decide how to deal with this reality. So it chose to criminalise pro-independence sentiment and **bring political debate to the courts**. Politics was pushed to one side to make way for judicial action and lawsuits.

And in so doing, it cast aside the notion so often defended, even by the courts, that the State was capable of tackling any political challenge with proportionate tools of political response, in order to embark on a path of spiralling conflict through the use of criminal jurisdiction, that is, the last legal remedy available to the State, renouncing any measure and any solution.

A few weeks earlier, on 18 September 2014, Scotland held its agreed self-determination referendum. British Prime Minister David Cameron publicly stated *I could have banned the referendum, but I'm a Democrat*.

g) Plebiscite

My clients and the Catalan government remained committed to "counting" the support for their project. To this end, and since elections cannot be banned in a democracy, they were called in the form of a plebiscite that resulted in a parliamentary majority for the independence of Catalonia, which marked the start of the eleventh term of the Catalan Parliament.

At this point, there is no question that the Catalan independence movement was, and remains, **non-violent**. Calls for dialogue, for the political resolution of a political controversy and for the peaceful pursuit of the ideals were the basis of the movement that began after the partial repeal of the EAC and remain so to this day.

There is no other majority political movement in our immediate geographical setting that has demonstrated such restraint and civility in its

public expression, offerings of dialogue and pacifism as the Catalan independence movement.

The violence that has ”tarnished” (in the words of the Public Prosecutor) the movement is a fallacy. It is actually the biased perception associated with the very fact of defending the ”right to decide”. It is the ideology itself that is perceived as the aggression, despite the fact that it is peaceful and will always remain so, because otherwise its promoters or participants would abandon it.

My clients **are democrats and pacifists more than they are independence-seekers**.

h) Parliamentary activity of the eleventh term

The plebiscitary elections largely confirmed the validity of the citizens' mandate and my clients, as elected deputies, had to see it through.

This was the context in which the transcendental Resolution 1/XI was passed on 9 November 2015, initiating *a process to create an independent Catalan State in the form of a republic*. As could not be otherwise, the Resolution picked up on the sentiment of the legislative chamber and shaped it into a finished parliamentary product that was political in nature.

The resolution also dealt with a number of matters of civic interest, from housing rights to energy poverty, public health and the refugee drama.

Parliaments – and parliamentarians – say what they want in the House, as the State power that they are, for such is the essence of modern democratic parliamentarism. This is why the guarantee of parliamentary **inviolability** was instituted centuries ago, generating a space to allow freedom of debate outside judicial intervention and control.

It goes without saying that this guarantee of immunity protected and

continues to protect Oriol Junqueras and Raül Romeva in their parliamentary activity. There is no provision in law for any action to hold them accountable for their votes and statements in their capacity as MPs.

Resolution 1/XI was transcendental not only because it encapsulated the yearnings of a significant portion of the Catalan population, but also because it was the excuse used by the Constitutional Court, in a new attack on the legislature, based on its new doctrine and new powers (obtained from the 2015 Constitutional Court Reform Act) to initiate proceedings to stop parliamentary debate on a specific topic – the independence of Catalonia – by censure.

This gave rise to an unprecedented situation during the legislature, in which **debate was criminalised** because the Constitutional Court forbade the Catalan Parliament, under the threat of committing a crime, to hold plenary debates and process proposals concerned with the exercise of the right to self-determination, thereby affecting various political initiatives. Thus, the Court underwent a shift from its traditional role of "negative legislator", or *ex post* supervisory body, to that of censor. In so doing, the Constitutional Court reiterated the political role that it had adopted in 2010, shattering what the Court itself had defended, stating that *to proscribe the discussion of ideas is quite simply, therefore, incompatible with democracy*, the very philosophy with which President Forcadell confronted that legislature.

It also confirmed a definition of the State in which the SC emerged as a rigid standard protected from any development and incapable of accommodating a new and legitimate political proposal. And yet, constitutions are models for piecing together certain values needed to tackle the reality of new political scenarios. Thomas Jefferson epitomised this in his theory of "periodic renewal", proposing that the Constitution

should be renewed by each generation.

Constitutional reforms (or interpretive evolutions) are ultimately formulas for adapting to **new social realities** and the **changing values** of citizenship, so they are necessary as a means of governance in the face of difficulties and challenges that did not exist when the standard was drafted.

The Constitutional Court and other State powers and institutions ought to set up a continuous "dialogue" in which any institution of political representation has the legitimacy to make a constitutional interpretation that would help to avert the rigidity of the system and be sensitive to **social evolution**.

My clients have always acted with the conviction that the exercise of the "right to decide" could be accommodated, even within the limits of the Spanish constitutional system.

i) Draft referendum

As it happens, the referendum was not part of the programme drawn up by the Catalan Government after the 2015 elections, but was eventually included at the proposal of Carles Puigdemont during the vote of confidence to which the Catalan Parliament was put on 29 September 2016. It was decided at the time that the best way to proceed was direct democracy and the ballot box, the essence of the independence movement.

The idea of a vote, shared not only by sectors of sovereignism but also by many other political figures who, while not pro-independence, were committed to democracy, obtained a very large consensus.

The Catalan President thus publicly proposed a referendum on self-determination as the goal of his governmental programme, which took the form of a parliamentary resolution of confidence, 292/XI that was never challenged.

According to surveys, 80% of Catalans were and remain in favour of the independence referendum, regardless of their intention to vote for or against.[7]

It was against this backdrop that the Catalan Government, and my clients, prepared the self-determination referendum ultimately held on 1 October 2017.

The only decision for unilateral execution made by my clients related to the facts before us was that of convening and promoting this referendum. Voting can never be a crime and indeed, according to the Spanish Criminal Code, it is not. Therefore, my clients decided that the population of Catalonia had the right – and had earned that right – to cast their vote in

[7] Press article DOCUMENT No. 7: https://elpais.com/elpais/2017/09/22/media/1506106430_606062.html

the ballot box. There is no justification for preventing a population from checking the level of citizen support for a momentous political decision.

The referendum was a firm political decision that would take place within a few months. Its political importance and validity could not depend on the legal validity accorded to it by organs of the Spanish State.

j) New lines of judicialisation

Given the clear signs that the majority of Catalan citizens wished to vote in a referendum and that the Catalan Government was making political preparations to allow this, new initiatives were devised to thwart it through the police force, the public prosecutor and the judiciary, which, plainly, did not constitute a criminal offence given the clarity of the decriminalisation of the offence under the repealed Article 506 bis Criminal Code and its material criminal irrelevance due to the absence of any shortcoming that could alter strict compliance with the *ultima ratio* principle.

Within this *lawfare* strategy, designed and spearheaded on all fronts and in all contexts by the Public Prosecutor and the Civil Guard, there arose – and not by chance – the opportunity to use criminal proceedings unduly allocated to the judge presiding Examining Court No. 13 of Barcelona.

Under the pretext of a *criminis notitia* whose place in the criminal context bordered on farcical, there began the true "investigation" of the case at hand, tainted from the outset with unlawfulness, processed with total disregard for the fundamental rights of the persons under investigation, subject to a disproportionate secret regarding actions, relegating the transfer of any charge and its very specification, to come up with what was actually a **General Case** against Catalan independence imbued with the philosophy on which Enemy Criminal Law rests, as we shall later see.

The aforementioned criminal proceedings, Preliminary Proceedings 118/2017, ignored the investigation of specific criminal acts as they had the sole purpose of **monitoring a political space** and its representatives in order to obtain evidence to fuel all the criminal cases that could be instituted in the future and also to prevent the population of Catalonia from voting on 1 October.

The initial impetus to the proceedings came from the initiative of sectors of what has been termed the "extreme right" of politics, acting as plaintiffs in all parallel cases investigating the Catalan independence movement. The political movements that concern modern democratic Europe so much are those that continue to define the scope of action of the courts.

The Barcelona Judge obtained all possible resources and was granted extended activity to allow him to work exclusively on a single court case. And while judges and magistrates must juggle macro corruption cases with the ordinary management of other court matters, the crusade against independence was accorded every possible means of support.

The artificial court reporting constructed in Examining Court No. 13 of Barcelona, as well as all the (unlawful) sources of evidence fuelling this case are merely the result of this irregular investigation, "instrumentalised" for the purposes of criminalising Catalan independence seekers.

k) Popular mobilisation

Regardless of what other defences may rightly argue regarding the legitimacy of popular mobilisations and organisation through associations, we cannot ignore the fact that none of the actions attributed to my clients involves the "sectarian" control or instrumentalisation of Catalan citizens.

The direct criminalisation of the Òmnium Cultural (OC) and Assemblea

Nacional de Catalunya (ANC) organisations and their leaders or the indirect criminalisation of citizens supporting the Catalan independence cause written in the prosecution report is utter nonsense.

The charges describe facts constituting the **exercise of fundamental civil rights** and irrationally link them to criminal offences. This accusation turns into the formula for preventing the exercise of such rights. While the present case evidences a general attack on a political ideology and movement, it is also a specific attack on the exercise of fundamental rights of my clients and citizens.

Both OC and ANC are organisations of impeccable standing and clear public interest that channel the will of the people through organisational structures and processes committed to the peaceful political pursuit of legitimate interests. These two associations have acted in all citizen mobilisations that they have promoted with a firm commitment to public spirit and non-violence, turning the mass gatherings and demonstrations of Catalan sovereignism into zero-risk spaces for civic co-existence and formulas for the dissemination of an ideology and thinking that are impossible to criminalise.

The demonstrations and expressions of the independence movement have been spectacular for their massive, festive, respectful and civic character, as recognised both nationally and internationally.

l) 20 September 2017

Ten days before the referendum on independence, the secret proceedings in Barcelona triggered a macro police operation in which the Civil Guard made numerous arrests of members of the administration of the Catalan Government and diverse searches of ministries of the Catalan Government

and other premises. There were 14 arrests and 41 simultaneous searches. The police operation was named after the God of Death *Anubis* and was intended to "stop the referendum" (a goal that is openly accepted in the prosecution reports). It was based on court decisions that showed contempt for basic fundamental rights and pursued an aim, as we have said, other than that of the investigation of a crime.

Curiously, on that day, the Judge presiding over Examining Court No. 13 replaced a colleague in another Court such that he had the competence, as the Duty Judge of Incidents, to control the development and legality of decisions he himself had taken, including the *habeas corpus* that were presented on that 20 September 2017. The Court Judge thus maintained his "exclusive" position in the persecution of the independence-seekers that earned him such a heartfelt – and somewhat curious – tribute from the Judge presiding over this Court, who, in a personal letter made public by the media, congratulated him for having "changed the course of Spain's history",[8] together with praise from another member of the General Council of the Judiciary, José María Macías Castaño,[9] who defined the Barcelona Judge as a *patriot* challenging the *folly of a handful of Catalans*.

The approach of the Civil Guard in its operation to search the Ministry of Economy in Barcelona city centre was curiously laidback: it made a number of arrests and searches 10 days before the referendum in the centre of Barcelona, leaving Civil Guard cars parked mid-pavement, with doors open and rifles inside, without warning or coordinating any support with the

[8] It is stated thus in the news article presented as DOCUMENT No. 8, which reproduces excerpts of the letter: https://www.elperiodico.com/es/politica/20181105/lesmes-juez-1-o-cambiaste-rumbo-historia-7128941

[9] It is stated thus in the news article presented as DOCUMENT No. 9, referenced at the following link: https://www.elespanol.com/espana/20181104/ramirez-sunyer-juez-extraordinario-patriota/350834915_12.html

Mossos d'Esquadra responsible for public order.

Reporters arrived on the scene *ipso facto*[10] (almost before the Civil Guard) and circulated the details and location of the police operation before any mention that could be attributed to those who called or supported the protest that took place subsequently.

After a time and once the news had been broadcast, OC publicly protested against the police action and joined the initiative to express its protest through a peaceful civic tool that is the right of assembly and demonstration. People spontaneously gathered in droves to join the rally, seemingly because they also wanted to protest against the disproportionate judicial and police reaction to an aspiration that they believed to be legitimate: that of voting.

Rallies were also held in Madrid[11] and specifically with regard to the Barcelona rally, this took place in an atmosphere of active political protest without any remarkable incidents, bringing together demonstrators, residents, passers-by and tourists (it was business as usual for the shops in the area), respectful of the commitment to peace and in enviable conditions of order and civility for such a mass gathering.

On 20 September, a **legal protest** took place. There was no prevention or attempted prevention of any of the acts that the Judicial Commission ultimately carried out. There was no prevention or attempted frustration of any legal proceedings. Nobody was attacked or hurt. The rally was called off

[10] As the Twitter account of *El Mundo* newspaper explained at 8:02 a.m.: https://twitter.com/elmundoes/status/910383631209783297attached as DOCUMENT No. 10.

[11] At the rally in the Plaza del Sol of Madrid, Ramón Espinar, Secretary General of Podemos in that Community, said *The government must start negotiation and dialogue. Today, in Catalonia, freedoms are being violated* (https://twitter.com/PodemosCMadrid/status/910565607782928384). We present it as DOCUMENT No. 11.

and the Mossos d'Esquadra acted only when the need to maintain public order so advised under the criteria of proportionality inherent to the functions of a democratic police force.

In a democracy, the issues that arise from popular mobilisations ought to be tolerated, without prejudice to the personal attribution of responsibilities (of whatever nature) to those who depart from the philosophy of shared action of the persons who protested to the Ministry for the limited and anecdotal way in which it was done.

For the philosophy of action of the pro-independence movement and its rallies and demonstrations not only excluded resorting to violence and repeatedly defended citizenship; in fact, it had prepared for this to be the case, with staff to keep order at the rallies and even disseminating slogans that denounced and isolated specific anti-social acts of protest that could tarnish the good reputation built year upon year and prevent "false flag" operations.[12]

RAÜL ROMEVA did not attend the rally as he was in Madrid[13]. Some of the press took statements that he had made, such as this one: *The Catalan movement has remained peaceful throughout the process and in the demonstrations over the years, with millions of people on the street* [...]. *We insist that this should be resolved politically. Not with the police, not with the judiciary and not with the army or violence.*[14]

Despite the judicial authority having failed to make the notification

[12]As evidenced in the tweet of 19 September 2017, in which the bar association DRETS circulated a document whose contents, among other information, appealed for the isolation and reporting of violent acts taking place in peaceful rallies of the sovereignist movement, attached as DOCUMENT No. 12.

[13] As shown by DOCUMENT No. 13.

[14] The article appears in its original version https://www.dr.dk/nyheder/udland/cataloniens- udenrigsminister-vi-er-i-undtagelsestilstand and is attached as DOCUMENT No. 14. The translation was carried out privately under Article 144 of the Civil Procedure Code (LEC).

provided for under Article 564 of the Criminal Procedure Code (LECrim), ORIOL JUNQUERAS, being the figure of authority that he was, visited the headquarters of the Ministry that he presided over. His presence did not pose a problem to the execution of the judicial action beyond that which the heads of the police operation or the Court Clerk may have had, knowing that the then Vice President empathised with the decision of the citizens to express themselves peacefully against the disproportionate police operation.

In the late hours of that 20 September, however, the stance of the Court Clerk performing the search of the *Ministry of Economy* would play an important role. Having completed the search and after the Court Clerk refused to leave the premises through the front door, which she could have done without risk to her person, the mediation unit of the Mossos d'Esquadra devised a plan to leave through the Coliseum theatre, where a performance was being staged. This clever manoeuvre would achieve the goal of evacuating the judicial commission without sacrificing any legal rights.

For reasons unknown but which could be connected to the ideological affiliation of the aforementioned Court Clerk, she suddenly decided to recount what had happened in a biased version that served as a perfect excuse for the construction of an apocalyptic account of events that would prove very useful to the accusatory theses and key to the prosecution and imprisonment of two good men, Jordi Sánchez and Jordi Cuixart, and to the criminalisation of the exercise of civic popular protest and stigmatisation of the entire Mossos d'Esquadra, who had actually acted diligently and faithful to their commitment to a truly democratic police force.

The Court Clerk's twisted story offers a hyperbolic view of events that the

Public Prosecution has adopted as its own, ignoring how it conflict with the reality. For example, the low wall standing just over a metre high over which the Court Clerk climbed with the help of the Mossos d'Esquadra to enter the rear patio of the Coliseum theatre grows to 150 cm in the Public Prosecutor's indictment document.

m) Preparation of the referendum

The Government of Catalonia, and my clients, worked on the organisation of the referendum on self-determination from their respective roles of political representation. And they did so convinced of the legitimacy of their actions, of their legality as acts of the exercise of civic rights (right to freedom of expression and to ideological freedom) and the undeniable criminal irrelevance of this goal.

This political advocacy materialised itself in diverse initiatives, both to publicise the characteristics and conditions of the vote and as support for its logistics, but never involved the disbursement of public funds, even with the certainty that the public's majority support for this political goal would legitimise any action seeking to comply with the majority popular sentiment.

RAÜL ROMEVA RUEDA, in the performance of his powers in external affairs, took every opportunity to explain what was happening in Catalonia, what a majority segment of the population wanted and what rights and freedoms were considered jeopardised by the actions of the Spanish Government, always with an emphasis on the need for **political negotiation**.

In his position and as part of his duties, ORIOL JUNQUERAS i VIES, together with the rest of the Catalan Government, spearheaded the translation of the mandate obtained in the elections into political action and was the face

on many occasions of the determination **to be able to vote** in the referendum.

The Catalan Government's leadership coincided with self-organised popular initiatives that would eventually make it possible to express their vote in the long-awaited referendum.

Neither before 20 September nor afterwards did actions take place knowing or assuming the possibility that the vote of 1 October could constitute a criminal offence or lead to a violent split in the population, since not only was this absurd but also contrary to the ideology and political action of the Catalan sovereignist movement.

Despite opinions that may be based on the accusations, my clients were well aware that a peaceful path to independence existed and that the maintenance of indestructible standards of civic commitment to Catalan independence was assured and this, despite the existence of technical analyses of police risk which, exerting little power of persuasion in scenarios such as the one that would follow, failed to unseat a reality constructed deep in the minds and will of my clients: the only path is that of non-violence, only the non-violent path will bear fruits and even in the face of violence the answer should be non-violence.

This pacific conviction of all agents in the process of Catalan independence was shared. Several studies[15] on world conflict have shown that the non-violent response is quantitatively more successful in solving conflicts than violent action.

Nonetheless, this investment in non-violent political action reached the

[15] CHENOWETH and STEPHAN in *Why Civil Resistance Works* explain that the last century's successful methods of conflict resolution have largely been non-violent.

point of planning and anticipating what should be done in situations in which violent actions could infiltrate the movement. For such situations, the Catalan independence movement had developed tools to prevent any violent reaction, tested at all the mass demonstrations of recent years: staff to maintain order, constant appeals to peaceful behaviour, dissemination of guidelines for action in sporadic cases of violence or heavy investment in education for non-violence by groups such as *En Peu de Pau,* which held dozens of courses and conferences on the subject during this period.

There was a strong consensus in the Spanish political context that

"In the absence of violence, everything could be discussed".

In short: to fight violence with non-violence. Whatever would have happened, on 1 October, the citizens of Catalonia committed to the referendum would have acted as a non-violent movement and, as was later confirmed, the referendum turned out to be an exceptional peaceful demonstration in a context of extreme police violence.

However, my clients could never have foreseen the magnitude of the violence doled out by the National Police Force and Civil Guard on 1 October under the command of Colonel DP, today classed as criminal by various courts, including Examining Court No. 7 of Barcelona (in Preliminary Proceedings 1439/2017) and Section Five of the Provincial Court of Barcelona (in Appeal No. 645/2018).

n) 1 October 2017: placing a vote in a ballot box

My clients had pledged to hold a referendum and the day arrived on which to do so. Many aspirations were condensed into that 1 October 2017 in Catalonia: that of those who held the unshakeable view that a vote had to be held on a clear political problem and those who also wanted to vote in support of the future Catalan Republic or, conversely, to remain part of the

Spanish State.

Since voting in a referendum (that is, placing a vote in a ballot box in response to a question) is not a crime, and given that the State had numerous legal tools and policies at its disposal to respond, without violence, to this type of initiative, over 2,000,000 Catalans went out to vote that day, despite the rain.

And they did so publicly, not in secret. They did not do it in fear, but with hope and dignity. And they did it **peacefully and orderly**. They voted all day long, even when they received the news and saw the footage of police brutality at polling stations.

In political terms, 1 October was the point of no return, not least because of the decision taken by the Spanish authorities against the will to place a vote in a ballot box, which was to deploy riot police to confiscate these boxes and ballots with the order of exercising the degree of violence necessary to achieve it.

o) The violence of 1 October

Despite the inevitable discrepancies between the operational management of the Mossos d'Esquadra and the political leadership of the Catalan Government, they deployed an operation based on implementing the recommendations and standards of conflict management applicable to any police force in a democratic society, based on criteria of proportionality between the goal to be achieved (stop the referendum) and the pre-eminence of the value of civic co-existence, defined both in international humanitarian law and in the specific mandate of the judicial authority ordering the intervention by the Order dated 27 September 2017 (Civil and Criminal Chamber of the High Court of Justice of Catalonia) and in alignment with the opinions of the State Attorney General and the express orders of

Instruction 4/2017 of the Secretary of State for Security.

However, the Security Coordinator who defined the action of the National Police force and Civil Guard did not read or did not wish to read the court decision stating that civic co-existence was to be maintained and did not hear or did not wish to hear the instructions given in this regard by the judicial authority issuing the order. And so these security forces and corps acted very differently to the Mossos d'Esquadra and, clearly, to the action of a democratic police force as defined by the Organization for Security and Co-operation in Europe.

Every politician and police officer knew perfectly well that there was no way to stop the voting on 1 October and given that it was impossible to meet their goal of stopping the referendum, both because of its mass popular support and due to the well-known fact that votes could be registered at any of the polling stations across Catalonia with the use of a "universal electoral roll", the National Police and the Civil Guard acted with goals other than that of executing the court order, focusing on producing unprecedented images of violence that could (in all likelihood, in their own minds) **make voters afraid** and stop them from participating in the referendum or **that they would be chastened** for having done so.

We cannot ignore the possibility that the seemingly irrational decisions of those in charge at the National Police and Civil Guard were also, indirectly, ingredients that confirmed a predetermined and actively sought hypothesis: an alleged confrontation that would feed the bizarre theory of a popular uprising. In the run-up to the referendum, the media had published the discourse of the authorities (including the spokesman of the Spanish Government Mr IM), which very precisely – and intentionally –

introduced vocabulary seeking to classify voters as a "tumultuous mass".[16]

The disproportionate police action not only bolstered the solidarity of Catalan, Spanish and foreign citizens, but also produced one of the most shameful images for the powers of the Spanish State to be seen in many years, which resulted in a unanimous **international condemnation**, especially given the surprising refusal of the Spanish politicians and police representatives to recognise the excesses that took place in the repression of voters that, incidentally, creeps into the prosecution reports even today.

The National Police and Civil Guard operated with unnecessary violence, entering property without authorisation (private schools), charging and beating defenceless people in closed areas and in the presence of children and the elderly, dragging them by their hair, kicking and punching, insulting and generally showing lack of any restraint in their action compatible with the responsibility of a police force in a modern democratic state and incompatible with the court order that clearly expressed the need to consider the legal rights in conflict.

In short, the National Police and Civil Guard injured more than 1,000 citizens in order to seize a few ballot boxes and voting slips without accomplishing their mission and forever tarnishing their name and reputation with their victims and the international community.

The only action of active resistance by citizens against the police was anecdotal and, in any case, unrelated to the dignified collective exercise of political expression that was the referendum of 1 October. In all events, the aetiology of the injuries supposedly suffered by officers and recorded in the

[16] DOCUMENT No. 15 contains publications in which the Public Prosecutor and political representatives began to repeatedly use legal concepts such as "tumult" prior to and as part of a strategy to promote the actions of sedition and rebellion announced previously.

prosecution reports does not correspond to the action of or assault by voters in the referendum.

The police management of the National Police and Civil Guard was an international scandal,[17] an unjustified and illegal action that violated fundamental rights and an attack on the dignity of Catalan citizens that further jeopardised the political management of the territorial debate.

On 1 October, many were left wounded and with psychological scars but none of this stemmed from the action of citizens who came to polling stations and maintained a pacific stance, protecting their right to express themselves through non-violent passive resistance.

p) The subsequent days of October 2017

The days following the suspension of Catalonia's autonomy under Article 155 SC were days of intense political activity and popular mobilisation but the efforts of the Catalan government to **come up with a channel of dialogue** were as intense as the Spanish Government's reiterated refusal to engage in such dialogue. It refused to contemplate even the possibility of international mediation.[18]

Even after such a historical and overwhelming expression of a desire as that evidenced by the referendum, the Spanish Government maintained its refusal to negotiate, merely adorning it with threats and the criminalisation

[17] Human Rights Watch denounced the action in its article presented here as DOCUMENT No. 16 https://www.hrw.org/es/news/2017/10/12/espana-la-policia-utilizo-la-fuerza-de-manera-excesiva-en-cataluna and the United Nations High Commissioner for Human Rights Zeid Ra'ad Al Hussein questioned the "excessive use of force" by police besides criticising the abuse of the precautionary measure of pre-trial detention adopted in these proceedings and calling for a political solution, as evidenced in the following news articles presented as DOCUMENTS No. 17 and 18: https://www.elmundo.es/espana/2017/10/02/59d225d9468aebe1548b45c9.html (1) y https://www.publico.es/internacional/referendum-1-jefe-ddhh-onu-ve-cuestionables-argumentos-gobierno-justificar-cargas-policiales-1-0.html(2).

[18] This is reported, for example, in the article presented here as DOCUMENT No. 19, which talks about the "20 offers of mediation": https://www.ara.cat/politica/ofertes-mediacio-Rajoy-puigdemont-declaracio-independencia_0_2149585036.html

of the pro-independence movement.

In parallel, the Constitutional Court maintained its offensive against the legislature, going so far as to suspend a plenary session of the Catalan Parliament in an express and unprecedented measure in a democracy, which decision is now being investigated by the European Court of Human Rights (ECHR).

My clients have always insisted and still insist today that the solution lies in political negotiation.[19] The Declaration of Independence of 10 October was yet another expression of the political will, based on peaceful, democratic, legitimate and parliamentary action, to create a scenario of inevitable multilateral negotiations (between Catalonia, Spain and the European Union) based on respect for democratic principles.

These negotiations are not a pipe dream – and nor is any legitimate political aspiration – since they coincided with comparable experiences showing that agreement could be reached on the right to decide and its exercise in contemporary democracies, as occurred between the UK and Scotland, Canada and Quebec, and France and New Caledonia, to name but a few.

Since 1905, there have been 106 independence referendums, with 54 of these taking place since 1991. Half of the latter have been held with the consent of the parent state and the other half without its consent. Therefore, voting in a referendum to decide the future of a sub-state is nothing extraordinary.

The popular decision resulting from the referendum had to be translated into a political outcome and a specific parliamentary product, which was

[19] DOCUMENT No. 20 is a video of the press conference held by Raül Romeva on 18 October 2017 in Brussels invoking the principle of democracy and pacifism as the only way to ensure respect for the standards of the European Union.

done through the Declaration made in the House on 10 October and the subsequent vote held on the 27th of the same month by **inviolable** MPs of the Catalan Parliament, who have evidently not been held accountable.

The Declaration explicitly mentioned this repeated vocation of dialogue in accordance with the principles of the public international law of democratic states.

Following the umpteenth refusal of the Spanish Government to engage in talks and the decision to suspend the political autonomy of Catalonia, all of the political forces of Catalonia accepted the electoral challenge put forward by the Spanish Government on 21 December and decided not to execute any of the effects of the Declaration of 10 October and to continue to seek spaces for political negotiation.

On 21 December, with a historical participation of 81.95% of voters, the sovereignist parliamentary majority was upheld. This showed that ignoring the problem would not make it go away and that the only way to solve it would be to deal with it politically.

My clients are primarily democrats and pacifists. They are committed to the right to decide of the Catalans and convinced that the democratic principle protects the pursuit of majority political demands sustained over time that deserve a political solution (that is, negotiated) that is non-judicial so as to preserve the separation of powers.

Their project, therefore, is to insist on political and democratic solutions based on dialogue and mutual respect, for the construction of a Catalan Republic within the European Union.

B) PREVALENCE OF FUNDAMENTAL RIGHTS AND DEMOCRATIC VALUES

a) Democratic criminal law *versus* Enemy Criminal Law

Both the political management of the facts that we have recounted and the judicial reaction to them that we have described have led to the widespread **violation of basic and fundamental human rights**. In most cases, these violations involve the generation of flaws that have rendered the legal proceedings invalid and given rise to an incompatibility between the punitive action sought and the maintenance of standards characteristic of a modern democracy.

Besides the specific procedural involvement of the rights violations described, we should not forget that the case is part of a political and judicial strategy that has had pernicious effects on the public sphere in general, since what it sought to attack was a pacific and legal political movement and any popular demonstration in support of that movement for the right to decide of the population of Catalonia, and this could only be done through a deterioration of the rules of the democratic state.

The criminal investigation and prosecution system must be subject to the **democratic values** set out in Article 1 SC and Article 2 TEU, in accordance with the principles of international law validly accepted by Spain.

Under these premises, no action taken by the State apparatus may disregard these rules and principles or the democratic legitimacy of the fundamental rights protecting all citizens would be undermined, in accordance with the SC, the European Convention on Human Rights (ECHR) and other international law transposed to the legal system through the provision set out in Article 96 SC.

Democracy is based on a series of principles that should inspire, inter alia, criminal law itself.

Under the **principle of democracy**, political decisions are legitimate if adopted according to the preferences of the majority. This principle is closely linked to the right to political participation, vote, freedom of speech and other political rights allowing for genuine citizen participation in political debate and decisions.

Democracy must respect both civil and political **fundamental rights**, whose scope is sometimes individual and others collective. They are set out both in the SC and in diverse binding international instruments, from the ECHR to the Charter of Fundamental Rights of the European Union (CFREU), the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR). Naturally, these rights include all those relating to criminal proceedings.

Under the **principle of deliberative democracy and political pluralism**, any matter may be freely discussed if this is done peacefully and with respect. There can be no democracy when it is militant.

The principle of **legality** or, specifically in relation to criminal law, the principle of criminal legality prohibits the punishment of acts not provided for by law or whose framework is dependent on an unpredictable legal interpretation, and is related to the principle of legal certainty, specificity, non-retroactiveness, etc.

The principle of **separation of powers** guarantees that the judiciary, as concerns us here, is a neutral arbiter of conflicts and protected from interference by the executive branch and political parties.

Lastly, the **principle of contestation and protest** implies the need to protect

the right of citizens to resist and contest decisions made by public authorities, provided that this is done peacefully. The right to protest is the first of the rights because it is the formula for demanding respect for the other fundamental rights.

A **democratic criminal law** must uphold and be compatible with the above principles.

Contrary to this apparent consensus on the validity of the democratic principles, the political movement for the right to decide of Catalans has garnered a response that has launched them into a crisis, a response implemented through the adoption of formulas of reaction typical of **Enemy Criminal Law**, a construction incompatible with a democratic criminal law that is marred by the traits of what is known as Actor Criminal Law.

In Enemy Criminal Law, the State does not provide a response to a citizen-offender but rather combats and threatens its enemies, whom it does not regard as "citizens"; instead, through the symbolic burden of the penal system, it attributes to them a "perverse" characterisation offering responses far removed from the necessary specification of the principle of legality that seem disproportionate to the acts under examination and which are usually accompanied by the relaxation or elimination of procedural guarantees, including that of the exceptionality attributed to pre-trial detention.

Enemy Criminal Law *is the negation of criminal law* as stated in the Judgment of the Supreme Court (STS) dated 20 July 2006.

One of the first rights violated in the case before the Court is the right of any citizen **to live in democracy**, meaning the need to be treated in accordance with the principles set out, whose validity and value are

assumed to be indispensable in any modern society in our setting. These principles may not be eliminated, reduced or offset among themselves, for only the validity of all of them puts us in a virtuous setting.

This case evidences clear flaws nullifying the decision due to lack of respect for fundamental rights arising out of the tarnishing of criminal law by elements of “enemy criminal law”. Such flaws, beyond any development of the arguments in the proceedings indicated by the Chamber, can be summarised as follows.

The rights violations described have plunged the democratic model into a crisis that can only be restored by the punishment of such violations.

b) Right to self-determination and democratic principle

The trial of this case cannot avoid the question as to why my clients are the victims of an undeserved attack by the prosecution. The ultimate reason is that the defendants are champions of Catalonia's “right to decide” as an expression of ideas of a certain legal substance (not only political), ideas whose defence, regardless of whether or not they are shared, ought to be covered by the exercise of the fundamental rights characteristic of a democratic state under the principles outlined in the preceding section.

My clients defend the exercise by the Catalans of their **right to self-determination** under Article 1 ICCPR which states that *all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

They also advocate the necessary respect for the **democratic principle** according to which peoples are entitled to political solutions to their legitimate demands if they are peaceful, have significant popular support

and persist over time.

The defence of such ideas can never be criminalised in a democratic state.

The right to self-determination has not been strictly linked to colonial situations for many years now. To do so is to merely beg the question on the basis of the earliest manifestations of the discussion on the decolonisation phenomenon. To talk exclusively about the "right to self-determination of the colony" is usually the argument used as an excuse to deny this right to the people who possess it.

Self-determination is concerned with human rights and personal dignity and is about individuals and peoples taking control of their destiny and fully developing their identity, either within the boundaries of existing states or through independence. Such a right is no longer a mere principle; it is now part of *ius cogens* and currently linked to the need to **avoid conflict and ensure world peace** and democratic order.

There are no **international legal restrictions** prohibiting a sub-state entity from deciding its political destiny.

Nor is there **any prohibition in European Union law** on the peoples that form it to exercise their right to decide within the Union.

From a European standpoint, Article 3.5 TEU recalls the need for the EU to contribute to peace, security and the protection of human rights under international law and the United Nations Charter. The right to self-determination is also included in the Helsinki Final Act signed by the Spanish State and its values are expressly incorporated into the legal system of the European Union through Article 21 TEU.

The right to self-determination is integrated into the Spanish legal system directly through the provisions introducing the law of treaties and the

international principles underlying the fundamental constitutional rights.

This is why many jurists maintain, using very solid arguments (arguments that our clients concur with), that the Spanish Constitution does not prohibit or limit the exercise of the right of self-determination, which is *ius cogens*, provided that it is in accordance with a modern conception of constitutionalism as a formula for "debate" between public authorities that is sensitive to **social evolution**, in addition to the need to interpret the system under the principles of Article 2 TEU.

Spain's membership of the European Union has constituted one of the largest transfers of sovereignty of the State. This transfer takes place under the provision of Article 93 SC and finds its greatest exponent in the almost endless list of powers conferred on the European Union, either exclusively (Article 3 TFEU) or on a shared basis (Article 4 TFEU). Under the principles set out in Article 17.1 TEU, European law prevails over the law of the Member States in accordance with CJEU case-law, and its effectiveness may not be opposed by any provision of national law, including those of constitutional status (Judgment of the CJEU of 26 February 2013, *Melloni* case). European Union law recognises all of the rights and principles recognised by the international community and adopts them as its own.

European Union law does not prohibit in any form the exercise of the right of self-determination; quite the contrary, it establishes this right as customary international law. Indeed, none of the referenda on self-determination held within the European Union has generated any dispute regarding compliance with EU law.

It makes no sense to ignore the existence of this fundamental right to avoid a legal and legitimate debate on the primacy of human rights over any form

of legislation, including constitutional.

Beyond the well-known stance of the International Court of Justice which states that *international law does not prohibit declarations of independence*[20] (an opinion that contextualised the principle of territorial integrity, under international law, to relations between states and not to situations in which the independence of a sub-state entity was under discussion) and the right to national self-determination, the **principle of democracy**, as conceived, for example, by the Supreme Court of Canada in the case of Quebec, requires devolving responsibility in managing the process of Catalan independence to the political power. When conflicting legitimate powers converge, as is the case of Spain and Catalonia, the democratic authorities have a duty to negotiate. This is confirmed by mere observation of international practice where, in almost every case, the sub-state entity and the national state negotiate the parameters for the estimation of the political will.

Thus, it is clear that my clients are on trial primarily for their defence of a certain political and legal understanding of the right of the Catalan people to self-determination or to obtain a political solution to their legitimate political demands, and this involves the violation of all the fundamental rights that the criminalisation of such ideology has produced, from ideological freedom, to freedom of expression, the right to demonstration and assembly, the right to political representation, etc.

c) Civil rights and political rights

The case is essentially a political case of the persecution of a dissident

[20] This is how it was determined in the case of Kosovo, a state recognised by 112 UN members, including 23 EU Member States. Although Spain and Serbia have not officially recognised the State, there are now mutual recognition arrangements between Serbia and Kosovo.

ideology, whereby the expression and exercise of fundamental civic and political rights are criminalised.

The persecution of the political ideals of my clients, a legitimate ideology, constitutes an attack on their **ideological freedom** (Article 16.1 SC) or thinking, conscience and belief (Article 9 ECHR) regardless of whether this violation is materialised primarily against the externalisation of that thinking and, hence, the violation of other fundamental rights (expression, assembly, demonstration, etc.) or in revealing the existence of **discrimination** on ideological grounds that also violates the guarantee of Article 14 SC and the right of Article 14 ECHR. Such rights are internationally recognised by other instruments, such as Article 18 ICCPR or Article 10 CFREU. There are many examples in the actions to demonstrate that what is being criminalised is the very idea of promoting a political reform of the State protected by the SC within the "non-militant" formula of the modern democratic state.

This attack took place from the earliest actions of the proceedings through court judgments that criminalised the political project of independence (for example, in the decisions of the investigating judge on folios 431, 437 and 2964) through the widespread tolerance of ideological interrogations proscribed by Article
16.2 SC or the substantiation of precautionary measures restricting freedoms based on the adherence of the persons under investigation to a specific political project and ideology.

And it is precisely in its expressions and manifestations that this ideology has suffered attack. Thus, the legal proceedings have criminalised mere exercises of the right of **assembly**, **association**, **demonstration** and **freedom of expression**. (Articles 20.1, 21 and 22 SC; 10 and 11 ECHR; 19 and

20 UDHR).

It is inconceivable to think that freedom of expression can be nullified by any court action except in cases of direct incitement of highly reprehensible actions, such as incitement to hatred or violence. Above and beyond the violation of this right in relation to parliamentary or political activity (which we will discuss later), the case involves the widespread criminalisation of the expression of ideas related to the Catalan independence cause and the political criticism of the State, its institutions, authorities and agents.

It is a clear distortion of the stage of the protection of fundamental rights and democratic shaping of a state to appeal to rules of territorial configuration of said State (indissolubility of the Spanish Nation under Article 2 SC) as principles or rules applicable to the process at hand or the task of administering justice, under parameters incompatible with the protection of conflicting political ideas that form part of political pluralism (1 SC).

Freedom of expression is essential in the development of national policies and strategies of government and is one of the basic pillars of a democratic society and its progress and development. This was found to be the case in, for example, the ECHR Judgment of 15 October 2015 (*Perínçek vs Switzerland*).

The courts must also protect political discourse as a formula for the participation of citizens in public life (ECHR Judgment of 15 March 2011).

Freedom of expression is a right likewise recognised in Article 11 CFREU. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The CFREU naturally also recognises the prohibition

of discrimination on grounds of conviction or political opinion, as well as the right to cultural diversity (Articles 21 and 22 of the Charter).

Both the prosecution and the judicial process itself have resulted in a disproportionate and unacceptable limitation of the rights of assembly (Articles 21 SC, 21 ICCPR and 11 ECHR) and demonstration, sometimes linked to the right to protest or contestation, since, ultimately, the criminal action sought primarily to punish behaviours of citizens who peacefully assembled and demonstrated on 20 September and 1 October 2017.

Regarding the right to demonstrate, the CJEU gave its response to a preliminary ruling in the case *of Eugen Schmidberger, Internationale Transporte und Planzüge vs Austria* 2003 that clearly set the limits and interpretation, according to the regulation of EU law, of the examined right even when it interferes with the principle of free movement of people and goods, stating that even when the latter were compromised *the national authorities should make an appropriate weighting with the interest of protesters* [...] *they must accept the ordinary disadvantages for those who do not participate in the mobilisation when the objective of the latter involves the public demonstration of an opinion*.

The CJEU specifically addresses the need to weight, when deciding whether to prohibit demonstrations, the risk of generating reactions that could potentially cause more dysfunction than those specific to the exercise of the fundamental right without restrictions.

Addressing the true nature of the rights of assembly and demonstration, so as not to denaturalise them as intended in the present case, requires an understanding that their development can only have certain limits based on restrictive measures provided for by law and that these must be

proportionate. The right to assembly is one of the foundations of any democratic society and as such *States enjoy a certain but not unlimited margin of appreciation in its restriction* (*Barraco vs France* 2009).

It is also clear that a citizen does not cease to enjoy the right to assemble or demonstrate due to the *existence of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour. The possibility that people with violent intentions, non-organisers of the mobilisation, join the latter cannot take away the right* (*Kudrevičius and Others vs Lithuania* 2015).

While any interference in the right of assembly or demonstration may lead to undue restriction, as sometimes occurs with the denial of authorisation or its dissolution, it is clear that the police repression during the referendum constituted disproportionate interference with the right of all voters, including my clients.

Any measures interfering with freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities – do a disservice to democracy and often even endanger it (*Güneri and Others vs Turkey* 2005).

The case has also served as an example of the generalised suspension of the **political rights** of my clients, incompatible not only in their judicial determination but also blatantly unconstitutional in their interpretation and legal definition, and which has resulted in the destruction, in its collective dimension, of the right to **political representation** (23 SC, 3/p1 ECHR and 25 ICCPR).The case was initiated by a complaint that take advantage of the **cessation of MPs** under the improper application of Article 155 SC, which

resulted in the establishment of an irregular forum that ordered the imprisonment of my clients and other defendants; the defendants were subsequently denied **participation in the election campaign** and were even **fined** because it was considered that they had; following their election as MPs, they were **stripped completely of their political rights**, in clear contravention of prison legislation and international treaties, and were specifically prevented from attending plenary sessions; **they were prevented from participating in the nominations** for President of the Government of Catalonia and the investiture of one of the defendants was even cut short as a result of his sudden imprisonment; and finally, in an unpredictable and illogical legal interpretation, **my clients have been suspended from their public and representative duties**.

The proceedings thus challenge the very foundations of democracy, a system that ought to protect the individual and their political representatives, respecting the separation of powers and promoting the fulfillment of the fundamental rights of any citizen.

The application of the suspension of duties, a measure strictly applicable to cases of terrorist activity, contributes to the stigmatisation of the accused and constitutes an attack on their right to the **presumption of innocence**.

Article 23 of the Spanish Constitution (SC) covers up to three facets of autonomous rights: the right of political participation either directly or through representatives (sect. 1), and the right of access to public office under equal conditions (sect. 2), which leads, according to constitutional case law itself, to the right of access to representative public office included in public office, and to the right of access to public service in accordance with the principles of merit and ability of art.

103.3 of the SC.

In one of said examples, article 23.2 of the SC specifically guarantees that those who have had access to public office be retained therein **without any illegitimate disturbances**, because, if not, the constitutional rule would lose all effectiveness if, concerning access to public service or office under equal conditions, its exercise could be influenced or stopped.

Article 3 of ECHR Protocol 1 protects not only the exercise of the right to stand for public office, eligibility at the time of entering office, but also the later right to hold or keep this office. The limits in the exercise of the duties of the office or dismissal represent not only a restriction of the political representative's rights but also of all those members of the public that have elected him/her and, therefore, represent the violation of fundamental rights.

The process has meant the absolute derogation of the political rights of the accused, in a way that is disproportionate, inappropriate, and without any legal provision worth consideration, resulting in the blocking of the rights of the public to see its political representatives carrying out their duties without illegitimate interference.

d) The right to deliberation, freedom of expression and separation of powers

One of the pillars of the democratic state, which is the free expression of ideas and opinions, has been attacked through the criminalisation of **parliamentary debate** with the elimination of parliamentary **inviolability**, and by the criminalisation of the expression of ideas through their dissemination or public expression.

The inviolability of the *Parliament* and of its members is connected to the very functioning of the democratic system, with a guarantee of the

separation of powers and is connected to the protection of fundamental rights, specifically of the right to political participation (art. 23 of the SC and 3/P1 of the ECHR) and the right to freedom of expression (art. 20.1 of the SC and 10 of the ECHR) with a prohibition of prior censorship (20.3 of the SC), with a possibility of affecting the right of freedom of assembly itself (art. 11 of the ECHR).

Freedom of expression (which includes the freedom to express opinions and communicate and receive information) was conceived both by Spanish and by the European Court of Human Rights (ECHR) case-law in the broadest sense in the case of political representatives of the people because the value of the democratic state are placed even above fundamental rights and public freedoms, meaning that there is very little margin for interference in said right apart from having to respect the general principles of legal certainty, legitimate objective and need in a democratic society.

The ECHR has defined it by stating that *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 those that* ***offend, shock or disturb.*** *Such are the demands of that pluralism, tolerance and broad-mindedness without which there is no democratic society* (ECHR judgment *Nilsen and Johnsen, v. Norway* 1999).

The ECHR judgments in *Jerusalem v. Austria* 2001 or *Cordova v. Italy* 2003 state very explicitly that, *in a democracy, the Parliament or any other similar body are essential forums for political debate. There must be* ***very strong reasons*** *to justify interference in the freedom of expression exercised therein*.

The disproportionate intrusion into the right must also be considered

according to the nature and severity of the sanction or response that the state offers to those who *a priori* exercise their right to freedom of expression to avoid a dissuasive effect that would undermine democratic principles.

In constitutional law it is interesting to consider the analysis of the judgment by the Court of Justice of the European Union (CJEU) Grand Chamber of 6 September 2011 concerning European law that reminds us that *article 8 of the Protocol is closely connected to the freedom of expression* (...) *the freedom of expression, as an essential foundation of a democratic pluralistic society reflects the values on which, according to article 2 of the Treaty on European Union (TEU), the European Union is based, and constitutes a fundamental right that is guaranteed in article 11 of the Charter of Fundamental Rights of the European Union (CFREU), which, by virtue of article 6 of the TEU, section 1, has the same legal value as Treaties*.

The importance of the freedom of expression concerning elected posts (*Castells v. Spain*) has sometimes been connected to the defence of the right of national self-determination (*Erdogdu v. Turkey* 2000) and is connected with the use, for example, of terminology such as “fight, resistance, independence, separatism, war against the people and the freedom of the people”. The relationship between freedom of expression and inviolability has been specifically analysed in the ECHR judgment *Szél v. Hungary* 2014, which states that *both rights help to protect the freedom of expression in parliament and to maintain the separation of powers, legislative and judicial, and also contribute to the protection of an effective political democracy that constitutes one of the cornerstones of the Convention system, particularly where they protect the parliamentary autonomy*.

Regarding the control of parliamentary activity, this court established as

early as 2004 that *the limits to be imposed in the Parliament must come from the Parliament itself and, ultimately, receive the verdict of public approval or disapproval through the ballot box*.

On the contrary, the case before us is an incredibly crude example of the general prohibition of parliamentary discussion and resolutions concerning a certain subject, namely the independence of Catalonia, changing the nature of the Constitutional Court and turning it into a new power of the state with the authority to carry out the prior censorship of the debate of ideas and of legislative production.

e) Fragmentation in parallel investigations

The aforementioned criminalisation of the political ideology and of the actions of those political representatives who defend it has been carried out through the **generation of various parallel investigation processes,** designed in order to generate or normalise a totally indefensible scenario that violates the most basic rights related to the right to a fair investigation process and trial.

The main characteristic of the investigation processes that resulted in the charging of my clients is that they establish extra-procedural investigation spaces that are impossible to control by the defences.

This procedure forms part of the strategic design of an action for the criminalisation of a legal political space, the first expression of which is the existence of numerous procedures whose purpose is the same or is inextricably linked, processed separately to achieve, thanks to the impossibility of defences being able to control said procedures, the generation of a clear violation of the right to a defence and an inequality of arms.

Said situation has meant a violation of the right to **effective judicial protection, to a procedure with all guarantees and a defence** (article 24 of the SC) and the violation of the right to a **fair trial** (article 6 of the ECHR) as an example of the need to preserve the guarantee of equality in the handling of the process. The aforementioned fragmentation has led to the generation of a clear inequality of arms, has stopped the exercise of the right of contradiction in the procedure, has stopped the right to information concerning the process and even access itself to elements that are important for the defence, thereby blocking the development of significant acquittal strategies (affecting both evidence and the questioning, hearing of and analysis of its legality) and participation in the submission of evidence and, in short, impeding an effective defence.

A **first procedure** comprises the Preliminary Proceedings 118/2007 by Examining Court No. 13 of Barcelona that started in January 2017 and is still ongoing. Beyond the specific violations of rights that have occurred in the processing of this "general case", their mere existence can be explained as the system of generating a secret investigation field based on the allegation of undefined facts that make it possible to investigate certain people, rather than specific offences. Said procedure is the excuse used to monitor all the Catalan pro-independence political activity during 2017 and up to the present day. The process is the instrument used for the gathering of evidence that will be used in all other legal proceedings against the pro-independence movement, impeding the contradictory participation of my clients and blocking the hearing of information required for the challenging of sources of illegally obtained evidence. The procedure also produced a situation of complete delegation of the investigation into the Judicial Police Force, advancing even further towards an extra-procedural parallel

investigation with constant disinformation. This party requested its addition to the case before us some time ago, a request that was not even replied to by the Investigating Judge.

As a **second investigation procedure,** we can indicate the procedure carried out by the Seventh Command of the Civil Guard on the orders of each and every one of the legal authorities and the Public Prosecutor involved. Regarding the multi-purpose initiative powers granted by Examining Court No. 13 of Barcelona, the Civil Guard (CG) submitted witnesses and accused parties to questioning without a defence, using the condition of a witness to obtain information even from members of the public who deserved treatment that was compatible with their material condition as an investigated party, without ever paying attention to the protests of their defences. Through said extra-procedural investigation and separately from the procedure under discussion, the CG prepared its statements using prose that was worthy of a political journalist and provided the sources of evidence of the parallel procedures directly to all legal authorities and to the Public Prosecutor, giving no opportunity for their contradiction by the defences. The investigators, led by people with a clear lack of neutrality and impartiality, are also considered as “victims” of the acts attributed to the defendants.

Even before the investigation of the Examining Court of Barcelona, the High Court of Justice (HCJ) of Catalonia had already begun investigations (**third block of proceedings**) against the Bureau of the Catalan Parliament, which was later expanded to include the Government of the Generalitat, that is, Preliminary Proceedings 1/2016 and Preliminary Proceedings 3/2017. Said proceedings, added to the case before us, have not stopped the HCJ of Catalonia from now recovering part of the investigation into the same facts

as in their Miscellaneous Proceedings 47/2018. These proceedings that focused on the investigation of acts of disobedience of rulings by the Constitutional Court and that rejected any rebellious or seditious approach, rapidly became another instrument used to attack the referendum for self-determination that, despite the fact that it was not illegal, as had been decided by the criminal legislator, as early as September 2017 became the main target to be combated. It is in the Preliminary Proceedings 3/2017 that all the resolutions were issued through which the holding of the elections on 1 October were banned or attempted to be banned, not "its legal validity" but its effective implementation, and at a stroke the High Court of Justice closed down websites and buildings, intervened in IT services and databases, and ordered ballot papers, boxes and envelopes etc. to be seized. Sometimes its measures were the same as those taken by Examining Court No. 13 and the Judicial Police Force reported to both legal bodies equally.

As an example of a **fourth type of investigation processes,** we have the proceedings of the Public Prosecutor. There are references to numerous investigation proceedings carried out by the Public Prosecutor, against mayors and other members of the public, some ultimately legally charged, and for actions that were the same or similar to those that comprise this case, in extra-procedural investigation proceedings. The legal nature of the investigation has not stopped the Public Prosecutor from, on occasions, continuing with its proceedings without obeying the mandate of article 773.2 and other similar provisions of the Spanish Criminal Procedure Act and even hiding this from the judicial branch.

At the Central Examining Court No. 3 of the National Court, **the fifth parallel proceedings** were followed through the assumption of an unheard of

competence and by making use in a few hours of the abandonment of the government of the Generalitat to imprison my clients through the establishment of an "express" prison for those who had not even had time to prepare their defence. For months, and without any criticism of the accusations, two simultaneous investigations were followed concerning rebellion and sedition in two incompatible jurisdictions (the Central Court and the Examining Court of Barcelona). In the examination of the National Court there was again gathering of evidence that would later be sent to the Supreme Court as some of its investigated parties would also be sent, selected using criteria that are hard to defend beyond the use of opportunistic criteria. The competence and *causae contentia* of the case were diluted and disappeared.

The proceeding before us is the **sixth set of parallel investigations** regarding identical facts. The Supreme Court assumes a competence that it does not have (to investigate Catalan parliamentarians) to later add investigated parties without parliamentary immunity through criteria with no rational connection. Members of the Bureau of the Catalan Parliament (who submitted to and should submit to the jurisdiction of the HCJ) and by connection members of the public without immunity are on trial in this case, as well as members of the Government of Catalonia imprisoned because of their "inseparable" actions in a proceeding in which, for example, the actions of the Mossos d'Esquadra are analysed, who are under the control of the National Court where there has been an identical accusation to that of the case before us (even in view of a divergence between the processes) presented on the same date. In the current proceeding there has not been any real judicial examination, as it is based on the evidence from Examining Court No. 13 and this is based on the precautionary measures adopted, but

at the same time the accumulation of all the aforementioned processes is avoided, which all fundamentally have the same subject as this case.

It goes without saying that the executive powers of the reformed Organic Law of the Constitutional Court (LOTC) also revolve around the **Constitutional Court** in a parallel body concerning the described purposes, announcing through its sanctioning powers actions to help with the elimination of any dissenting political initiative in its parliamentary declarations and the implementation of the referendum and that, currently, the **Court of Auditors** has also initiated an investigation and monitoring due to the same facts as those before us.

As our clients cannot defend themselves properly in proceedings in which they are not parties or are not considered as such, the fragmentation of processes represents a flagrant violation of their rights. There is also no equality of arms regarding the accusations, because both this court and the Public Prosecutor have the capacity of coordinated management that the defences do not have, apart from the irregular procedural processing of information that should be investigated and tried jointly given their inseparable nature.

Finally, as a specific element of the violation of rights, the disregard concerning the requests for the accumulation of processes that are inextricably connected has caused a **rupture in the *causae contentia*** that has an influence on the possibilities of organising an effective defence in the process before us, as the result of the various investigations that have been carried out on connected facts cannot be completely evaluated, without a direct infringement of the right to information in the criminal process and to access the material elements of the case.

f) General case

The most unjustifiable attacks on the fundamental rights of my clients occur in the design of a prospective investigation system based on absolutely state of violation of the right to a defence since its beginning that prohibits the participation of the accused in those proceedings where they will materially be investigated for being who they are and not for what they might have done.

A fundamental element for the generalised scenario of the violation of the right to a defence is the fragmentation of the investigations into separate parallel processes, and another element is the existence of a judicial police investigation by the Public Prosecutor that represents a **General Case** against Catalan independence, which is carried out in secret and is protected against the legitimate exercise of procedural rights of the investigated parties.

This prospective investigation stains as illegal all the sources of evidence obtained in the proceeding of Examining Court No. 13 of Barcelona (as well as those practised in the prior or parallel Public Prosecutor proceedings) and consequently sources of evidence from those proceedings that are based, in connection with illegality, on the evidence from said original illegal proceeding.

This case has its origin and is based on Preliminary Proceedings 118/2017 initiated on 6 February 2017 and divided irregularly to Examining Court No. 13 of Barcelona. In fact, the aforementioned case will also generate situations beyond legal ones, such as the police operation against which thousands of members of the public demonstrated on 20 September 2017 and that will become part of the “facts” of the accusation. This Special Case is the heir and result of said proceeding in Barcelona.

The evidence put forward by the accusation has its origin in “general” investigations that represented the violation of the fundamental right to a legal process with all guarantees, the right to a defence and to an impartial court (art. 24.1 and 24.2 of the SC) as well as the right to a fair trial (art. 6 of the ECHR).

Examining Court No. 13 of Barcelona initiated an *ad personam* investigation with an undefined or vague subject that generated an unlimited investigation space, including an indiscriminate extension of investigations based on generic suspects without being based on evidence, admitting complaints and lawsuits without any motivation whatsoever in order to lead to a prospective investigation based on the total secrecy of proceedings, implemented through disproportionate interference in fundamental rights, with the objective of stopping the vote of 1 October 2017 and criminalising a specific political movement.

The proceeding maintains an unjustified and disproportionate secrecy in terms of its formalities, with a delay in the referral of the accusation, constant disinformation regarding the subject of the investigation and through the assumption of a competence that was later rejected by the Investigating Judge himself.

The general investigation takes place in parallel through the action of the Civil Guard at the request of the Public Prosecutor in extra-procedural proceedings that will also be kept secret, even for the parties of the legal proceeding initiated at Examining Court No. 13, in order to generate an investigation space that is out of reach of the intervention of any investigated party and stopping the legitimate call for their rights in the process, without any possibility of either contradiction or defence.

The Public Prosecutor is investigating, illegally avoiding specifying the holders of rights in the investigation, with the same purpose as the criminal proceedings opened in direct violation of the obligation established in article 773.2 of the Criminal Procedure Code and exhaustively carrying out proceedings that are contrary to the necessarily limited nature of its pre-procedural investigations.

To do this, courts and public prosecutors have a police team that, with no limitation or control, defines the scope of the investigation to then extend it without limits to the control of a specific political arena, rather than to the investigation of illegal acts.

Said investigation is based on absolute delegation to the Civil Guard and specifically to its group in the 7th area (Barcelona), led by politicised investigators with a clear ideological bias[21] that, without any judicial control, will carry out an unlimited prospective investigation by offering statements that are tainted by subjectivity and portraying themselves as victims through which they gather any information that could be used in all parallel investigation proceedings in which the same police group is commissioned to carry out the investigation.

The information about the aforementioned proceedings has been completely forbidden to the parties of the Special Case. Some of the accused have not had the opportunity to discover the content of the investigations, or the opportunity to choose evidence or elements for acquittal, or the opportunity to make complaints about the violation of

[21] This was revealed in the article that we attach as DOCUMENT No. 21 https://www.publico.es/politica/cloacas-interior-jefe-policial-investiga-proces-carga-politicos-mossos-oculto-twitter.html and is connected with the complaints about the politicisation of police forces made in the article that we attach as DOCUMENT No. 22 https://www.eldiario.es/zonacritica/Policia-politica-gracias_6_607599254.html

fundamental rights due to said prohibition. And the information that other accused parties might have access to, who are indirectly aware of the content of the investigations, has not stopped the clear impossibility of participating in said processes as a party or contradiction or defence in the processes where the evidence for the charge were created and discussed.

g) Court predetermined by law

Both article 24.2 of the SC and article 6.1 of the ECHR refer to the guarantee of a **predetermined judge or court** or one that is established by law. Said right or guarantee must be related to any national legal provision that could determine the irregular nature of the constitution of a court or the choice of a certain holder of jurisdictional authority. Only if how the determination of a court or the choice of a judge is found to be predetermined in an objective and verifiable legal provision can it be understood that there is a guarantee regarding a fair trial. When the determination of a judge or court follows discretionary rules that permit the arbitrary nature and the *ad hoc* appointment of the members of the court, or when the rules of said determination are unknown or are impossible to verify, then the alleged right is infringed.

Regarding the determination of the judicial competence and its relationship with the right to an ordinary judge predetermined by law, none of the jurisdictional bodies entrusted with the examination of the facts subject to the process was determined in accordance with the law or with applicable precedents. Said right was also violated by the existence of unknown rules concerning the assignment, and interpreted in such a way as to generate an unjustifiable room for discretion and that enable arbitrariness in the appointment of specific holders of jurisdictional competence.

There is a **systemic** problem in Spanish criminal jurisdiction concerning the

appointment of courts, and therefore the governing body of the judges is subject to pressures from the executive power that determine and influence the composition, not only of courts, but also of specific judges that must be assigned to legal cases. At the same time, there is not enough **public information** about the criteria used for the assignment of cases in certain jurisdictions that encourage a room for discretion that is incompatible with the described fundamental right.

There are signs that both Preliminary Proceedings 82/17 of Central Examining Court No. 3 of the National Court, the Preliminary Proceedings 118/2017 of Examining Court No. 13 of Barcelona and Special Case 20907/2017 of the Second Chamber of the Supreme Court were assigned to their specific judges (or to the finally appointed investigating judge) **without following the assignment rules** and, therefore, through a decision that could have assigned the investigation to a specific judge not in accordance with national legislation and its implementation.

Also, neither the law nor its unanimous case-law interpretation under criteria of predictability established the competence of the National Court for the investigation and trial of the crimes of rebellion and sedition. Neither did legislation permit the investigation or trial of parliamentarians of the Catalan parliament before the Supreme Court in accordance with the allegations presented in the process of article 666 of the Criminal Procedure Code (LECrim).

The High Court of Justice of Catalonia has always assumed the competence for the investigation and trial of Catalans with parliamentary immunity for the aforementioned offences, with said competence being illegally taken by the Supreme Court.

Paradoxically, Examining Court No. 13 of Barcelona assumed the

competence for the investigation of the offences of rebellion and sedition of people without parliamentary immunity and held this for over one year despite later acknowledging that it had no type of competence whatsoever for the investigation of said offences (according to the criterion established recently by the new interpretation made by the National Court) as the system, fundamentally, for implementing a general case against pro-independence and acting as a sort of proxy for other courts.

The determination of the specific judges and magistrates that have assumed the examining work of the aforementioned cases has not followed the legal provisions or objective assignment rules.

h) Impartial judge

The lack of guarantees of **impartiality** (or of the appearance of impartiality according to the doctrine of the ECHR) of the judges of the legal investigations that exist in this case arises not only from the existence of a system that is incapable of guaranteeing the neutrality of judges (a systemic defect of politicisation and discretion in appointments) but also from specific grounds for recusation that have been employed during the examination and in the trial phase of the various cases against said judges and magistrates, never based on the rulings of the cases. This case demonstrates either the lack of or the blocking of effective systems to question the lack of impartiality of judges and magistrates through the recusation system.

Both article 24.2 of the SC and article 6.1 of the ECHR include the guarantee of judicial impartiality as part of the right to a process with all guarantees and to a fair process.

A fair trial is connected to the ideas of both independence and impartiality

of judges and magistrates and, therefore, the judicial power entrusted to the case must be independent from other processes of the State and from the parties in the process.

Independence is connected to the concepts already detailed in the previous section linked to how judges are appointed, the term of the mandate of members, the existence of guarantees against external pressures and the existence of an appearance of independence (ECHR judgment *Findlay v. United Kingdom*).

Therefore, those judges of the jurisdictional authority over which there are not guarantees against external pressures (pressures from other members of the court, government bodies or superiors, etc.) or those against which there are sufficient grounds for distrust to question the convenience of keeping a determined judge appointed in view of the investigation or trial will not be independent in the sense of the right to a fair trial.

Impartiality is connected to the lack of prejudice or preconceived ideas that might affect the correct implementation of the proceeding and decision making under parameters of neutrality, with appearances again being important (ECHR judgment *Castillo Algar v. Spain*).

In this case there have been various mechanisms for the reporting of the lack of independence and impartiality of both investigating judges and of other parties involved in the management of proceedings, including the trial phase.

Beyond the reiteration of the grounds for recusation made during all the investigation processes (not only this case, but also in those whose result has been added to this case as evidence), their rejection has produced a violation of the aforementioned right, and has also led to other changes

related to the impartiality complaint.

Therefore, in these proceedings motions for recusation have been rejected incorrectly. Recusations have been requested repeatedly due to the accusations and on occasions fines have been imposed on the exercise of the right to recuse (something that has generated what is known as the *chilling effect* prescribed by the ECHR) and recusations have been rejected without investigating the matter concerning replacement judges, etc.

In said requests, grounds for lack of impartiality related to the prior hearing of the studied case (that is, objectively) and the existence of subjective elements concerning the loss of neutrality have repeatedly been presented, such as the clear and unavoidable camaraderie that could interfere with impartiality when analysing a complaint submitted at the time by the State Public Prosecutor before this court where said public prosecutor occupied a post for so many years.

The recusation of the Lawyer for the Department of Justice of Examining Court No. 13 of Barcelona has also been blocked, which is based on evidence for acquittal of this process, despite the clear ideological contamination spread publicly through his profile on social media.

There is therefore a widespread blocking of the mechanisms for the analysis of the impartiality of the judges involved in the investigations and the trial of the aforementioned cases, as well as evidence of a lack of independence and impartiality in the actions of some of them, which violates the alleged right.

i) Criminal legality or “no punishment without a law”

The principle of criminal legality is included in article 25.1 of the SC, article 7 of the ECHR, article 49 of the CFREU, article 15 of the International

Covenant on Civil and Political Rights (ICCPR) and article 11.2 of the Universal Declaration of Human Rights (UDHR), and is one of the inderogable rights of article 15.2 of the ECHR.

Said principle, as the expression of one of the foundations of a democratic society, means the need for all rules of punishment to be interpreted in accordance with **predictable criteria**, and therefore "predictability" is a corner stone of criminal legality and an element of the concept of **guilt** itself. The fact that the principal of legality is closely related to the concept of **democracy** is clear, precisely in view of the existence, in article 7.2 of the ECHR, of a modulation of the principle related to the ultimate validity of the values of a democratic society.

Predictability should be analysed in accordance with the criterion arising from previous case-law when the interpretation of a criminal provision is suggested, although the existence of a prior legal interpretation is not a requirement for the questioning of the predictability of the provision (*KA and AD v. Belgium 2005*).

Based on the above, it is clear that the definition made in the case of both the criminal principles upon which the accusation is made, and the accusation regarding how the rules of competence of the judicial bodies are **different from judicial precedents** recorded up to the initiation of the case. They are also unpredictable from the point of view of the principle of criminal legality and the reasons why the interpretation of criminal law has been perverted through a **new and unpredictable interpretation** have been repeated endlessly during the processing of the case, the most direct consequence of which has been the imprisonment of my clients and the suspension of their duties of political representation.

In the arguments that have already been made in court, there have been authoritative opinions (based on that of the legislator itself with the support of explicit parliamentary debates prior to the drafting of the classification of criminal offences examined including distinguished lecturers and professors in law[22]) supporting what is now proposed concerning the incompatibility between the tried facts and the suggested legal classification, according to which the offences of rebellion and sedition have been denaturalised (or "trivialised" in the words of the "academy"), through accurate arguments that are applicable through any of the methods for the interpretation of the rule (theological, grammatical, systematic, authentic or historical).

It is clear that the grammatical interpretation is important for the analysis of the validity of the right and to judge the rationality of the interpretation of the rule (*Jorgic v. Germany* 2007) and that the violation of the right is sometimes associated with the application of extensive interpretations or an analogy *in malam partem*.

And clearly this goes beyond the possibility that the alleged fundamental right could even question the very essence of the criminal provision due to defects of **certainty**, which are more noticeable in the criminal offence of sedition, which would make it incompatible with the alleged right (*Liivik v. Estonia 2009*). The criminal provision must precisely define the punishable behaviour (*Kokkinakis v. Greece*).

Finally, we should not forget the express connection that is made in criminal legality between the necessary **proportionality** between the strength of the punishments and the studied criminal offence (art. 49.3 of the CFREU),

[22] This is how it was defended in the manifesto that appeared in the press, which is attached as DOCUMENT No. 23 https://www.eldiario.es/tribunaabierta/banalizacion-delitos-rebelion-sedicion_6_838226207.html

proportionality that currently has been constantly attacked through the interpretation of the facts made both by the accusations and by the judicial authorities that have participated in the investigation of the facts.

Neither has the case been able to answer the arguments arising from the **declassification of the offence** previously provided in article 506 bis of the Criminal Code (CC) by virtue of Organic Law 2/2005 and the consequences arising from the lack of criminal punishment of the behaviour sanctioned therein in accordance with the *ultima ratio* principle and, therefore, the judicial action demonstrates the abuse of criminal law for the illegal replacement of an area without a criminal punishment through other types of offences, in clear violation of the mandate of the legislator and of its explicit criminal policy.

j) Presumption of innocence

The presumption of innocence has been legally established in articles 24.2 of the SC, 6.2 of the ECHR, 48.1 of the CFREU, 14.2 of the ICCPR and 11 of the UDHR and is fundamental in any democratic legal system.

Beyond its clear connection to the need for a guilty verdict to be based on legal proof that is valid and sufficient, article 6.2 of the ECHR also attempts to ensure that the submission of members of the public for trial itself is carried in conditions that do not violate the presumption of innocence, connected to the existence of **public or official declarations of blame** prior to oral proceedings, or **negative press campaigns**.

This is what, in the words of the ECHR judgment in *Allenet de Ribemont v. France 2005*, is meant when stating that *no representative of the State may declare, or allow it to be understood, that a person is guilty of a criminal offence before their responsibility has been declared by a court*.

The duty of respecting the presumption of innocence is incumbent upon judges, magistrates, members of the public prosecutor's office and prosecuting parties, police officers, civil servants and political representatives, meaning that the blaming of innocent investigated or accused parties can represent a clash between the oral proceedings and a prejudice that affects its development and result, violating the alleged right.

Blame is not only connected to clear declarations of criminal "guilt" but also to the effective meaning of the declarations, *beyond those raising questions or doubts that might have been employed and the subtleties of their literal form* (*YB et al. v. Turkey* 2004).

This is why the ECHR insists on the importance of the "choice of words" of civil servants in their statements regarding investigated and accused parties (*Arrigo and Vella v. Malta 2005*).

Likewise, a virulent press campaign can affect the impartiality of a process by influencing public opinion.

It goes without saying that said provisions of the ECHR are in line with the latest legal thought of the European Union.

The **presumption of innocence**, as a fundamental guarantee of criminal procedure, has been destroyed through a criminalisation campaign against the investigated and later accused parties, carried out from the official and institutional position of various representatives with public influence and with the political and legal power of the Public Prosecutor, etc. and also carried out with the complicity of a ferocious media campaign. Said campaigns, aimed at altering conditions concerning the presumption of innocence, came from the **constant leaking** of confidential legal information to the media and the disparagement of the investigated parties

and their defences in the required respect for the handling of the procedural information.

The constant criminalisation of my clients before the Trial has taken place through all possible media channels and has involved authorities and political representatives of various kinds.[23] At the time of the drafting of this document, one of the leading Spanish political parties has initiated a specific campaign for the criminalisation of Oriol Junqueras by putting a coach into service with his face on it and disseminating the message that "he would not be pardoned", that is, assuming his guilt in the process. It seems that said campaign, organised by the aforementioned national and widely established political party, will spread this message throughout the country in an attempt to achieve not only a future guilty verdict but also the conditions of its execution.

The aforementioned criminalisation has also been carried out through the planned introduction by public authorities of a **clearly incriminating language** to publicly determine and justify the bringing of the charges that comprise the accusation. And we should also remember the existence of explicit messages defended by political representatives and authorities regarding the need to **adapt criminal law** to suit the conduct subject to trial as an *ad hoc* response to the case before us, whether by changing criminal law or by increasing the provided punishment.

The accused have been publicly subjected to systems of clear **stigmatisation**, and hence the physical restraint when the accused appeared in court concerning the events of 20 September, suffered by my

[23] We attach as DOCUMENT No. 24 a series of tweets issued by political representatives, ministers, former minsters, presidents of political parties, judges, associations of judges, attorney generals, professors, police officers, etc. criminalising the investigated and accused parties, along with a video as DOCUMENT No. 25 in which Soraya Sáenz de Santamaría explains how the Partido Popular party had "beheaded" the Catalan independence movement.

clients in their transfers, the leaking of images taken by hidden cameras in penitentiary facilities, and the constant **media campaign**[24] of blame in various media that has helped to create the spreading of the idea of their guilt instead of a defence of the presumption of innocence that is typical of any democratic society.

Occasionally, but no less worrying, we should also emphasise how the criminalisation and stigmatisation of the defence has even gone beyond the defendants to affect legal professionals, as occurred for example through the granting of protective measures to a witness "against the lawyers" of the defence who were going to carry out a cross examination during the investigation.

k) Rights related to the process

As has been reported during the entire process of the case and also in the parallel proceedings that have comprised the "real" investigation of the facts, this has been done with a violation of rights connected to the criminal judicial process itself, initiated through the intentional development of a fragmented investigation in various judicial proceedings as a way of generating **a violation of the right to a defence**, with complete delegation of the investigation to the police and **without judicial supervision**, and through the relaxing or annulment of basic procedural rights. This would therefore affect the right to a fair trial of article 6 of the ECHR as well as the set of guarantees provided by article 24 of the SC or by article 14 of the ICCPR.

Therefore, in the investigation there has been a violation of the right to a defence, with a **lack of information** about the facts of the accusation, the

[24] DOCUMENT No. 26 includes a sample of said media campaign and DOCUMENTS No. 27 to 29 include audio documents.

disproportionate and widespread interference in fundamental rights (privacy, secret communications, inviolability of the home), with an abuse of the **secrecy** of proceedings and finally with the determination of jurisdictions that stop the exercise of the right to obtain a review of the case and a **second-instance appeal** (with all its consequences regarding the lack of a review of the Judgment and the impossibility of submitting evidence in the second instance and questioning of its *a quo* rejection by the Court).

The criminal investigations have been led by people with a clear **bias** towards an opinion of guilt, ranging from investigating judges, professionals in the Department of Justice to the police force itself. This bias has meant the administration of justice by those who feel like "victims" of the events and who act under a prejudice that is incompatible with the duty of impartially dispensing justice, within proceedings whose purpose is that of a **General Case** against the Catalan pro-independent movement, formally situated within the margins of accusation determined by adversarial initiatives directed by political parties of the extreme right.

Although said flaws have been presented and developed already and some will be in later sections or processes, what is relevant, beyond the submission that was made at the beginning of the oral proceedings, is that the violation of the right to a defence and the attack on the equality of arms has been widespread and, in an analysis of the process "as a whole", the right to a fair trial has been flagrantly and irredeemably violated, in addition to the violations that have occurred to substantive rights through the actions of the investigation authorities.

That is why, for example, some of said flaws that were reported during the investigation and that are only reproduced as a way of contextualising and understanding the complaint we are making will be archived.

- Some flaws connected to the violation of rights occur because of the **inequality of arms** and the management and direction of the proceedings in **prejudice to the defence**, as follows: calculations have been applied in the examination that were unfavourable to the defence through the incorrect admission of timely appeals, in Examining Court No. 13 the appeals of the defence were systematically rejected until the Provincial Court ordered them to be admitted, holiday periods were allowed that affected deadlines of the defence and that did not advance the process, investigation proceedings by the defence were repeatedly and generally rejected, legal documents of the proceedings that are on record as having been duly submitted have disappeared, the register of the HCJ was closed, stopping the defences from submitting an appeal against the decision to stop the self-determination referendum while said register was held open for the Public Prosecutor, access by the investigated parties to the proceedings was delayed until the authorisation of the use of IT equipment months later, the transfer of the investigated parties to locations close to their lawyers' offices was delayed, the exercise of the defence has been hindered through the management and direction of the proceedings, by forcing the parties to expressly request the particulars of the proceedings, the case has not been duly and regularly recorded on numbered folios, there have been problems with access to the virtual cloud, there has been a delay in the granting of copies of documents, access to specific particulars of the proceedings has been blocked, the intervention of the defence in processes in which facts are investigated that affect their accusation has been blocked.

- Other flaws are related to the **configuration of the investigation process** itself, in prejudice to the right to a defence, to be aware of the accusation and to have access to relevant material about said investigation, with an inequality of arms, as follows: the investigation has been carried out through various fragmented proceedings, gathering evidence without the intervention or the possibility of real contradiction by the parties, information has not been provided concerning the accusation and the alleged facts have not been specified, neither is there any sufficient specific information about the accusation in violation of the adversarial principle, investigated parties have been called at short notice, beginning the examination without the presence of a defence lawyer, making it impossible to prepare an effective defence and without the transfer of documentation upon which the accusation is based, secrecy has been maintained regarding unmotivated and unjustified proceedings without a formal accusation against the investigated parties, the guarantees of impartiality in the management of *habeas corpus* have been eliminated, there has been a delegation without judicial supervision to the police, there has been a lack of information about the accusation in judicial and police proceedings, the procedural nature of witnesses has been used to carry out a prospective investigation, the investigation has been heard by jurisdictional bodies without competence and through the perversion of the rules of connection and of the need to protect the *causae contentia* of the case, there have been constant leaks of information to the press, and there has been an opportunistic use of international judicial cooperation tools through the removal of European Arrest Warrants,

criticism of foreign jurisdictions or the lack of an appeal against systems for evidence to be taken by video conference, stopping the participation in the process of defences that could generate a contradiction of the elements of the process due to the mere fact of not residing in Spain.

- The process has been contaminated in numerous aspects by the intervention of investigators with a clear **ideological bias** against the investigated and accused parties, lacking the essential independence and impartiality, as follows: the examining judges have referred on various occasions to their personal experiences to justify the taking of decisions against the investigated parties, inappropriate protection has been given to witnesses as a way of prejudicing the result of the proceedings, the examining judge agreed on his own authority upon prison appearances, putting his criterion above any request about the accusations, the examining judge has publicly expressed his opinion about the progress of the case, technical defences have not been respected (through the protection of witnesses against lawyers, through disrespectful expressions and treatment by the judge of Examining Court No. 13 of Barcelona and the inappropriate prohibition of the intervention of lawyers in summary proceedings), the petitions of the accusations have been prioritised in the analysis by the examining judge of the case compared to those of the defence, there is a clear ideological contamination in favour of holders of jurisdictional authority involved in the proceedings and a lack of transparency concerning the rules for the assignment of cases, the examining judge has made inappropriate statements to the investigated parties and has allowed cross examinations with an

ideological tone, the management of the police investigation has been led by political opponents of the investigated parties that are not neutral or considered to be “victims” of the facts, statements of an ideological nature have been made in judicial rulings to justify decisions, and the lack of the prior hearing of the process by the trial court has not been guaranteed in terms of impartiality.

- The case has not protected **fundamental rights** during the proceedings as follows, in addition to what has already been stated: pre-trial remand has been abused, hindering the exercise of the right to a defence through the unjustified exercise of precautionary measures, statements have been taken from accused parties in handcuffs, motions for recusation have been rejected and the exercise of recusations has been targeted or incorrect costs have been imposed upon the party submitting the recusation, there is a lack of justification and proportionality in the adoption of measures of interference in fundamental rights (entries and records, wire taps, the admission of correspondence, the closure of websites, seizures, the absence of a lawyer during searches, a lack of supervision of the content of telephone conversations and leaking to the media and the use of private conversations, etc.), and protocols regarding due process in the obtaining of sources of evidence have been violated, thereby affecting the chain of custody.

The right to a fair trial has been destroyed through the complete permissiveness of a scenario including the limitation or removal of guarantees and rights that assist the investigated and accused parties in legal proceedings.

l) Dignity and liberty

As has been stated, in its aspect of strict respect of the most intimate human rights, the case has led to an unfounded and disproportionate limitation on the personal **liberty** (art. 17 of the SC, art. 5 of the ECHR and art. 9 of the ICCPR) of my clients, and on their treatment in a situation of detention that is incompatible with standards of respect for human **dignity** and that is classifiable as degrading treatment, a situation that will certainly be aggravated by the conditions in which they will have to face the proceedings of the hearing through which they will be tried in the case before us.

he reasons why my clients being held on remand in prison is excessive and is an attack on their personal human rights have been widely argued, and therefore we have made all said arguments as they have developed in the hearings and documents relating their personal situations, but in short their situation of the deprivation of liberty is **disproportionate and unjustified** because it is predominantly founded on the severity of the criminal punishment associated with the alleged offences and subject to the accusation and has not taken into consideration the **personal factors** that destroy the presumption of the risk of flight or of repeat offences, nor has it duly assessed the technical possibilities of guaranteeing against the risk of flight through **alternative methods** that are less invasive than imprisonment. The grounds upon which the precautionary measure have been based were unpredictable and variable, related to **subjective** and irrational opinions, and on occasions the result of the **prejudices and biases** of the examining judge.

Being held on remand has been determined by incompetent judicial bodes and sometimes through the **aggravation of the precautionary measure** of those who complied with all the obligations imposed for their being remanded on bail (the accused Raül Romeva) made at the request of the

examining judge himself (that is, with no request by the prosecuting party) and after the determination concerning the existence of a risk of flight in a ruling other than being held on remand (the analysis of the risk by the examining judge being on record in the indictment before the holding of the hearing as provided in article 505 of the Spanish Criminal Procedure Act called by the judge himself without request concerning the accusations).

Being remanded in custody has been **used to stop the enjoyment of other fundamental rights**, and therefore it has been ensured that my clients could not continue with the defence of certain legal and legitimate political ideas by virtue of their representative political mandate, with the provisional remedy being required for the provisional suspension of their representative duties, and also being used as a means to stop their political participation in the Catalan Parliament and the organisation of the right to vote in the legislative chamber. Recently, the ECHR, in its Judgment on *Selahattin Demirtas v. Turkey,* warned on the use of remand in custody as a way of silencing political opposition.

This Court has not made a due evaluation of the political representation that my clients hold. Far from being an element in favour of the imposition and maintenance of being held on remand, this is an element that should work in the opposite direction, reducing the possibilities of applying said measure.

Remand in custody has gone **beyond what is strictly necessary** for the maintenance of the purposes for which the measure is focused on and is not justified in any way whatsoever concerning those accused parties that in the past were released for said liberty to then be revoked without any objective reason whatsoever and that connected their conduct to a risk of flight, beyond the presumption that said flight “could occur”.

During their custody, transfers and imprisonment, my clients and other investigated parties in the proceedings have been unfairly treated through the use of inappropriate systems of physical restraint, subjected to transfers without security measures and in humiliating conditions, having been **verbally harassed** by civil servants (agents of the authority)[25], penalised for the dissemination of conversations made through the penitentiary communications system, having been **separated from their families and teams of lawyers for months** by a distance that is incompatible with the right to maintain a **family life** (and to preserve the best interests of their young children) and duly exercise their **defence**, and finally could be submitted to a trial under conditions that are **incompatible with dignity and peace of mind** that should be imposed on those who will have to submit to a trial of the characteristics and importance of the one before us.

The presentation of my clients in the oral proceedings in a situation of remand in custody is a mechanism for their public **stigmatisation** and constitutes an **advance in the punishment** that the accusations request, as there is no other explanation in response to the fact that Oriol Junqueras and Raül Romeva have appeared punctually for any judicial hearing every time they have been called, they are widely known and strongly wish to appear in the process, meaning that their desire is precisely to speak before the Court and protest their innocence, something that they cannot do any other way than by submitting to the oral proceedings.

We should remember, regarding the prohibition of inhumane and degrading treatment and of torture (art. 3 of the ECHR) the consequences

[25] The article can be read at https://www.abc.es/espana/abci-policia-archiva-expediente-agentes-burlaron-junqueras-llamandole-osito-201805281656_noticia.html which is accompanied as DOCUMENT No. 30, apart from being a widely-known fact and even being debated at parliamentary level.

that the confirmation of the accusation made relating to the repression of the referendum of 1 October 2017 would have on the excessive use of force that have been accredited in this case and on all those that analyse the development of said date.

TWO.- LEGAL CLASSIFICATION

The above facts **do not constitute any type of criminal offence** nor, specifically, do they constitute the offences of rebellion, sedition or the misuse of public funds that are attributed to my clients.

The facts described in these conclusions, as has occurred concerning the facts that describe their accusations in the classifications, do not match the description that, in accordance with the principles of legality and minimum intervention, must be given to the concept of *uprising* considered by the Criminal Code regarding the offences of rebellion and sedition.

The conduct of *uprising* provided in the offence of **rebellion**, beyond its adjectivisation of "violent", inherently carries with it said violent note and in a sufficient degree to determine the violation of the legal right subject to criminal protection.

Rebellious, *violent uprising,* conduct that is traditionally associated with situations of insurrection or revolt, includes the need for typical violence, specifically of ***armed*** **violence**, which has been expressly the opposite of the criminalisation of non-violent political movements seeking the political independence of sub-state entities.

The requisite of the use of violence is founded on practically all types of methods of interpretation of the offence, from the literal to the systematic, including theology and especially in accordance with its authentic interpretation, as shown in the detailed parliamentary debate that led to

the criminal categorisation of the current offence of rebellion.

Even before the update of the offence of rebellion carried out through the Criminal Code of 1995, the Constitutional Court had already carried out an interpretation (judicial) of the typical violence of the offence of rebellion (connected to the analysis of the constitutionality of article 55.2 of the SC) in which said violence remained as an inevitable requirement for the offence, violence that must be by a **sufficient entity** to endanger the legal right protected through conduct that is sufficiently **suitable** to represent injury to the state in the way provided in the various alternatives described by the provision that regulates rebellion.

It goes without saying that the State did not declare a state of siege, which is provided by the Spanish Constitution, nor is there any record whatsoever that the actions of the accused parties publicly encouraged the use of violent means to achieve their political ends.

None of the conduct described and attributed to my clients is focused on criminal ends and, on the contrary, show actions of the mere **exercise of fundamental basic rights**, such as the right of free assembly, demonstration and expression.

As there is no kind of description of conduct of uprising by the accused parties and based on criminal liability due to the *fact*, none of the accused parties can be held liable for conduct that is not attributable to them because of their conscious or intentional actions of inducement or incitement, or because of any other planned and agreed action regarding which there was no control in its execution.

The accused parties have always maintained a strong **commitment against violence**. There is no violent uprising and therefore there is no offence of

rebellion, neither was it planned or accepted that the progress of the political activity of my clients would lead to scenarios of the use of violence that said offence requires.

Neither does the description of the facts support an interpretation through the offence of **sedition**, which again implies conduct of *public and tumultuous uprising* with clear tones of violent insurrection.

Even based on the description of the facts made in the accusation documents, the conduct attributed to my clients is clearly included in the **exercise of fundamental basic rights** that, beyond generating (in the worst case scenario) problems in the implementation of actions by the authority that are accepted by any democratic concept of said rights, were **never aimed** at stopping the exercise of public duties or the duties of the legal authority.

The protection of public order implicitly entails the existence and tolerance of inconveniences associated with the public exercise of acts of civil protest, up to the point where the penal response must be based on a **restrictive and gradual interpretation** of the offence that is compatible with the **public expression of civil protest** and includes content concerning the offence of sedition that is in proportion and consistent with the high punishment that it provides and, in short, with the content of the offence that, in accordance with the *ultima ratio* principle it includes.

The aforementioned facts have an unequivocal political dimension and are inspired by the defence of a certain ideology with deep non-violent roots, expressed publicly through the free expression of ideas, civil demonstrations and the association of members of the public who share said legal ideology.

Neither do the facts constitute any act whatsoever of the **misuse of public funds,** as there has been no act committed by any authority to illicitly fund expenses that were contrary to the duty of loyalty in the custody of public funds.

From a perspective that is respectful of the principle of minimum intervention of criminal law and even taking into consideration the facts described by the accusations, there has been **no violation of the trust** of the public in the management of public assets rather, on the contrary, there has been political action by those who have responded to an explicit electoral mandate based on known manifestos by legal political parties.

The aforementioned facts must also be analysed by giving authority and material content to the decision of the legislative power expressed in Organic Law 2/2005, which specified not only the criminal political option of declassifying the illegal calling of referendums as an offence, but also determined the configuration of said facts outside of the scope of the strict gravity of criminal law in accordance with the principles of subsidiarity, proportionality and minimum intervention.

The presentation of grounds for said Organic Law is sufficiently clear about the legal scenario resulting from said declassification. *The above article, whose derogation is hereby carried out, refer to conduct that **does not have sufficient grounds** to merit penal punishment (…) Criminal law is governed by the principles of minimum intervention and proportionality (…) Therefore, the exercise of the powers to call or promote consultations by those who do not have legally attributed powers is perfectly controllable by channels other than the penal one (…) In short, the conduct considered in these criminal offences do not present the features required to proceed with their criminal classification. The Constitution and the legal system as a whole already **have***

sufficient and adequate instruments *to ensure respect for legality and for democratic institutions and guarantee the peaceful coexistence of all members of the public*.

Voting in a referendum is not an offence. **Calling** a referendum is not an offence either.

THREE.- RESPONSIBILITY and PARTICIPATION

As the facts do not constitute any kind of criminal offence it is unnecessary to therefore discuss responsibility.

FOUR.- MODIFYING CIRCUMSTANCES

Or to discuss the modifying circumstances of criminal responsibility.

FIVE.- PUNISHMENT

It would be appropriate to order the ACQUITTAL of the accused parties with all pronouncements in their favour.

I therefore

REQUEST THAT THE COURT accept this document, admit it and, by virtue of it, consider the above provisional complaint for the pertinent purposes.

FIRST ADDENDUM: EVIDENCE

That for the oral proceedings this representation take possession of the evidence put forward by all the parties (both accusations and defences), even if it is waived, and for its submission requests the following:

A) CROSS EXAMINATION
- Of all the accused.

B) TESTIMONY

From the following persons that must be subpoenaed for their appearance

in the oral proceeding hearing. Regarding those that have already been proposed by other parties, their service addresses are not given, nor shall grounds for the specific relevance be made if the grounds for their appearance are already defined by the accusations submitted.

1. AB (Parliamentary Senior Counsel).
2. XM (Secretary General of the Parliament).
3. JN (Secretary of State for Security of the Ministry of Home Affairs at the time of the facts).
4. JE (representative of the Government of Spain in Catalonia at the time of the facts).
5. JP (General Technical Secretary of the Ministry of Home Affairs).
6. DP (Colonel of the Civil Guard. Secretary of State for Security).[26]
7. ST (Chief of Police in Catalonia at the time of the commission of the facts).
8. AG (Chief of the 7th Area of the Civil Guard at the time of the commission of the facts).
9. Civil Guard officer with Badge No. xxx (investigating judge of the statements by the Civil Guard and who was active on Twitter under a pseudonym, demonstrating a lack of impartiality regarding those who he was investigating).

[26] We should emphasise that, due to the relevance of the aforementioned testimony of documents and videos relating to the actions of the State Security Forces on 1 October 2017 as has already been determined during the examination, DOCUMENT No. 31, which includes images of the charges at the Pau Claris secondary school (report "The people on the stairs"), is added to the set of audiovisual documents.

10. Civil Guard officer with Badge No. xxx (Secretary for the statements made by the Civil Guard).

11. MC - Badge No. xxx.

12. EQ - Badge No. xxx.

13. JM - Badge No. xxx.

14. Civil Guard Lieutenant Badge No. xxx (officer reporting to investigation officers of the CG in the facts of 20 September).

15. Civil Guard officer with Badge No. xxx (Head of the security force of the CG in the facts of 20 September).

16. MT (lawyer for the Department of Justice, Examining Court No. 13 of Barcelona).

17. SL (Chief of the Provincial Brigade of the Judicial Police Force of Barcelona).

18. Sergeant of the Mossos d'Esquadra, Mediation Department –

Badge No.xxx

19. Chief Inspector Mediation Department - Badge No. xxx.

20. JO, C/ xxx.

21. BP, C/ xxx.

22. GR, C/ xxx.

23. AB, C/ xxx.

24. GG, C/ xxx.

25. CH, C/ xxx.

26. JS, C/ xxx

27. AT, whose address is already in court files.

28. SS, head of the Vice-President's Office, to be subpoenaed at xxx.

29. LJ, xxx.

30. JA, C/ xxx.
31. ME, C/ xxx.

32. LL, to be subpoenaed at xxx.

33. TV.

34. ER, C/ xxx.

35. XE, C/ xxx.

36. JM, C/ xxx.

37. IP xxx.

The above (witnesses 20 to 37) were present during the protest held on 20 September 2017, either inside the facilities of the Ministries of Economy and Finance (witnesses 27, 28 and 29), or in their vicinities or during the search at Les Franqueses del Vallès (37), as recorded by video documentation or by inclusion in statement 2017-101743-00000112 in court files.

38. SV, to be subpoenaed at xxx.

39. PC, to be subpoenaed at C/ xxx.

40. JF, to be subpoenaed at C/ xxx.
41. MM, to be subpoenaed at C/ xxx.

42. XJ, to be subpoenaed at xxx.

43. JS, to be subpoenaed at C/ xxx.

44. AS, to be subpoenaed at C/ xxx.

45. PG, to be subpoenaed at xxx.

46. FO, to be subpoenaed at C/ xxx.

47. JR, to be subpoenaed at C/ xxx.

48. MR, to be subpoenaed at C/ xxx.

49. EG, to be subpoenaed at C/ xxx.

50. MB, to be subpoenaed at C/ xxx.

51. FS, to be subpoenaed at C/ xxx.

52. MR, to be subpoenaed at xxx.

53. MP, to be subpoenaed at C/ xxx.

54. MM, xxx.

55. LC, C/ xxx.

56. JS, C/ xxx.

57. JC, C/ xxx.

58. JM, C/ xxx.

59. JT, C/ xxx.

60. IA, C/ xxx.

61. RP, C/ xxx.

62. IG, C/ xxx.

63. YG, C/ xxx.

64. JT, C/ xxx.

65. JF, C/ xxx.

66. MM, C/ xxx

67. JL, C/ xxx.

68. EH, C/ xxx.

69. SM, xxx.

70. RF, xxx.

The above witnesses (38 to 70) were present during the events that occurred during the holding of the referendum on 1 October 2017 at various polling stations, accrediting their presence in the locations by photographic or video evidence or through their appearance as a party in the legal proceedings relating to the aforementioned events in the accusation documents.

71. DE, Director of the *Servei Català de la Salut* (Catalan Health Service) at the time of the facts as ratified by the report concerning the assistance provided due to the events of 1 October 2017 and his agreement with the medical service data from workers in said service, to be subpoenaed at xxx[27].

72. AG, to be subpoenaed at xxx. So that she can relate, through her personal experience, the scope and content of the action taken abroad by the accused parties and of the message conveyed at their conferences and press conferences before international bodies and specifically those included in the accusatory documents, and even the intentions conveyed personally by the accused parties that could be relevant for an understanding of the aims of their political action.

73. IV, xxx, for the same purpose as the previous witness.

74. FG, to be subpoenaed at xxx.

75. AH, to be subpoenaed at xxx.

[27] The aforementioned certificate is on record as DOCUMENT No. 32.

76. LA, to be subpoenaed at xxx.

The above witnesses (74 to 76) participated in parliamentary delegations and are aware of the programmes of international visitors from Diplocat.

77. JJ, to be subpoenaed at xxx.

78. AM, to be subpoenaed at xxx.

79. DG, to be subpoenaed at xxx.

80. GP, to be subpoenaed at xxx.

The above witnesses (77 to 80) participate as members of the Plenary or Executive Committee of Diplocat, and are aware of how it functions, of the projects carried out (including those detailed in the accusation documents), of its day-to-day activity and of its strategic orientation and, also, witness 80 is aware of the events that occurred on 20 September and 1 October in Barcelona and that are subject to the accusation.

81. MA, xxx, mayoress of de Sant Vicenç dels Horts, who was present when Oriol Junqueras attempted to vote at his polling station and was stopped by the Mossos d'Esquadra.

82. FM, former director of the UNESCO Centre of Catalonia, to be subpoenaed at la xxx, who employed Raül Romeva at the aforementioned centre under his management and where the accused was responsible for noteworthy activities in favour of peace and dialogue between cultures, especially regarding research into and promotion of the policies of disarmament and prevention of conflicts as detailed in Document No. 3.

83. XP, to be subpoenaed at xxx. Chairman of the *Fundació Marianao* that carries out social-educational projects and who is aware of the

commitment based on humanitarian values of the personal and political action of Oriol Junqueras concerning projects in the social economy and social acceptance.

84. EA, to be subpoenaed at xxx.

85. JV, to be subpoenaed at xxx.

Witnesses 84 and 85 prepared part of the white paper that forms part of the accusation.

86. CP, to be subpoenaed through international legal cooperation at xxx to provide a statement by video conference and with the guarantees requested in Twelfth Addendum.

87. MR, to be subpoenaed through international legal cooperation at xxx to provide a statement by video conference and with the guarantees requested in Twelfth Addendum.

88. AS, xxx and with the guarantees requested in Twelfth Addendum.

The inclusion of witnesses 86 to 88 (whose procedural nature should be materially assumed as that of investigated parties) is justified by the configuration itself of the charge and the literal content of the accusation in accordance with the accusation with the Indictment and the provisional conclusion documents.

89. JA, xxx.

90. RW, xxx.

91. DF, to be subpoenaed at xxx.

Witnesses 89 to 91 are aware of the activity taken by the *En Peu de Pau* group and appear in relation to the actions listed in statement 2018-101743-012, and the first of them (89) as director of the *FundiPau* NGO is

aware of the experience of Raül Romeva in matters such as international solidarity, human rights, the culture of peace and the peaceful resolution of disputes.

92. IC, to be subpoenaed at the Spanish Senate to give evidence on what involvement or awareness the President of the trial court had in the organisational decisions of the new General Council of the Judiciary and the political agreements reached in this respect, and also to state what communications or meetings he has had with said judge in order to accredit elements upon which preliminary questions are based about the violation of the right to an impartial judge.

93. JB, to be subpoenaed at xxx, as a witness who is aware, through his journalistic investigation activity and through his photographic documentation of all the facts that comprise the accusation and, specifically, of the protest and demonstration actions that comprise said accusation.

94. RR (Ombudsman), to be subpoenaed at xxx.

95. CE, to be subpoenaed at xxx to provide information about how he became aware of the true identity of the user of the twitter account @nmaquiavelo1984.

C) <u>EXPERT WITNESSES</u>

1.- MEDICAL EXPERT, composed of XC (specialist orthopaedic surgeon and Head of the Orthopaedic Surgery and Medicine Service of Sant Pau Hospital in Barcelona) and FC (specialist surgeon, Clinical Head of Accident and Emergencies of Sant Pau Hospital in Barcelona and responsible for the programme for polytraumatic patient care) to provide a report based on the

medical information on file in court regarding the etiology or probable cause of the injuries suffered by the officers of the State Security Forces as listed on pages 109 to 115 of the accusation document of the Attorney General in order to determine if they were caused by aggression or by other causes, as well as their scope and gravity. To do this, the aforementioned experts will need a copy of any medical or health care report in court files relating to the officers mentioned in said accusation document, along with the diagnostic evidence that they had, documentation that was requested by the examining judge (folio 765) and that should be in court files, the examination of which is essential for the preparation of the requested expert report.

2.- INTERNATIONAL LAW EXPERT WITNESSES consisting of calling the international rapporteur DK and the independent expert from the United Nations AZ so that, according to their specific knowledge in international law, give evidence before the court about the true scope and meaning of law in the self-determination of people and the implications in international law of the democratic principle, determining whether the "right to decide" movement in Catalonia is subject to international law and European law or not, and also the legal suitability of the calling of a referendum from the point of view of international law, especially for the purposes of contextualising not only the impact of said right on the case before us but also the legitimacy of the actions of the accused parties and, therefore, its relevance for penal purposes.

As the judgment of the Supreme Court of 29 September 2009 states, despite the controversy concerning "legal experts", *nothing prohibits the parties of the process from referring to, citing or providing relevant legal opinions* (…) *it is not unusual, in legal judgments, the calling of experts in law, or for*

courts to hear the opinions of specialists in the matter being tried, when these are matters of high specialisation or of particular complexity, or where it might be legally relevant to hear the general modus operandi of the relevant legal agents when ruling on the existence in the tried conduct of the subjective element of the relevant criminal offence.

It goes without saying that the scope of the aforementioned matters exceeds the standard analysis of domestic courts and is therefore subject to an obvious development on the international stage.

Professor DK is a jurist and Special Rapporteur to the United Nations on the promotion and protection of the rights to freedom of opinion and expression, as well as an expert professor in public international law, human rights and international humanitarian law. Co-founder of the Human Rights Program at UCLA and member of the American Society of International Rights, he is a professor at the University of California-Irvine.

Dr. AZ is an expert human rights attorney and independent expert for the promotion of a democratic and equitable international order of the United Nations Human Rights Council. He is an international law professor in the Geneva School of Diplomacy and International Relations and in the Masters at the University of Alcalá de Henares.

D) <u>DOCUMENTS</u>

1.- Consists of that which is gathered, in **ADVANCE** of the Oral Trial, evidence of the following pages of Summary 5/2018 (formerly Preliminary Proceedings 118/2017) of Barcelona Examining Court No. 13, which are necessary to defend the existence of a violation of fundamental rights in that proceeding which affected the probative material incorporated in the accusations, and as a basis for their challenge:

From VOLUME I:

- Folios 4 to 9: Complaint by Mr MD against Mr SV dated 27 January 2017.
- Folios 10 and following: Order to commence Preliminary Measures against Mr SV for a crime of disclosure of secrets.
- Folios 17 to 28: Prosecution proceedings 7/17.
- Folios 62 and following: Court Order dated 27 February 2017.
- Folios 67 and following: Court Order dated 03 March 2017.
- Pages 131 to 142: Complaint by VOX dated 24 February 2017.
- Folios 160 and following: Decision of 7 March 2017.
- Folios 170 and following: Court Order dated 27 March 2017.
- Folios 180 and following: Guardia Civil Report 2017-101743- 0019, dated 22 March 2017.
- Folios 196 and following: Decision dated 28 March 2017 which declares the proceedings secret.
- Folios 245 and following: Secret extension decision.
- Folios 340 and following: Written document from the High Prosecutor of Catalonia to Barcelona Examining Court 3 in which it is stated that DI 7/17 have been sent to Barcelona Examining Court 13.
- Folios 366 and following: Secret extension decision.

From VOLUME II:

- Folios 428 and following: Prosecutor's Office decree dated 14 June 2017, from the file of DI 18/17 and referral to Barcelona Examining Court 13.
- Folios 429 and following: Prosecutor's Office decree dated 28 March 2017, designating the Civil Guard for its investigation.

- Folios 431 and following: Press release dated 24 March 2017 from the Catalonia Prosecutor's Office.
- Folios 432 and following: Decree opening the prosecution dated 24 March 2017 18/17.
- Folios 443 and following: Decree DI 18/17 dated 21 April 2017 from the prosecution agreeing on the proceeding requirements of Publipress and the Department of Foreign Affairs.
- Folios 449 and following: Decree DI 18/17 of 16 May 2017, requirements to Indra and Sctyl.
- Folios 455 and following: Report dated 15 May 2017 nº2017- 101743-00000042, DI 18/17, regarding misuse of public funds, disobedience and prevarication.
- Folios 591 and following: Report 2017-01743-0055, DI 18/17, for disobedience, prevarication and misuse of public funds, dated 14 June 2017.
- Folios 648 and following: Legal proceedings dated 21 June 2017, by which DI 18/17 is received.
- Folios 650-667: Report 2017-101743- 0060 dated 22 June 2017.
- Folios 670 and following: Extension of the secrecy of acts dated 23 June 2017.

From VOLUME VIII:

- Folio 2569: Decision of the prosecution dated 18 March 2016.
- Folios 2595-2599: Decree DI 32/16 Office of Public Prosecutor, dated 13 June 2016.

From VOLUME XV:

- Folio 5098- : Document UPJ No. 6111 dated 30 November 2017, requesting an injunction for access to the financial ownership file of

SEPBLAC.

From VOLUME XVIII:

- Folio 6261: Court Order dated 16 January 2018 granting authorisation Document UPJ No. 6111.

From VOLUME XIX:

- Folios 6684, 6685: Document UPJ No. 474 dated 23 January 2018, requesting information related to the Diplocat.
- Folios 6912, 6913: Decision dated 1 February 2018 orders communication to AEAT regarding Diplocat.

From VOLUME XX:

- Folios 7180-7182: Decision dated 8 February 2018 which authorises access to the SEPBLAC file.

From VOLUME XXI:

- Folios 7642 and following: Motion to review Mr JS vs. Decision authorising Civil Guard access to SEPBLAC file.
- Folios 7646 and following: Motion to review Mr JJ vs Decision authorising Civil Guard access to SEPBLAC file.
- Folios 7702 and following: Decision on non-admission of motion to review by Mr JS
- Folios 7724 and following: Decision on non-admission of motion to review by Mr JS and Mr JJ.

From VOLUME XXII:

- Folios 7818 and following: Written communication from Mr JS giving testimony before the Civil Guard dated 26 February 2018.
- Folios 8017 and following: Motion to review Mr JJ dated 26 February 2018 against the Decision dated 19 February 2018.
- Folio 8020: Appeal of Mr JJ dated 28 February 2018 against the Decision dated 19 February 2018.

From VOLUME XXIII:

- Folios 8238-8246: Appeal of Mr JS dated 5 March 2018 against the Decision of 19 February 2018.

From VOLUME XXVI:

- Folios 9346 and following: Appeal of Mr JJ dated 22 March 2018 against the Decision dated 17 March 2018.
- Folios 9542 and following: Written document from Mr JJ requesting CD document foundation report mails.

From VOLUME XXVIII:

- Folios 10131 and following: Civil Guard Testimony Ms EB.
- Folios 10137 and following: Civil Guard Testimony Mr JG.
- Folios 10142 and following: Civil Guard Testimony Mr GC.
- Folios 10148 and following: Civil Guard Testimony Ms MS.
- Folios 10153 and following: Civil Guard Testimony Ms EL.
- Folios 10158 and following: Civil Guard Testimony Ms EM.
- Folios 10162 and following: Civil Guard Testimony Mr JG.
- Folios 10168 and following: Civil Guard Testimony Ms MJ.
- Folios 10172 and following: Civil Guard Testimony Mr AB.
- Folios 10176 and following: Civil Guard Testimony Ms AA.
- Folios 10183 and following: Civil Guard Testimony Ms TG.
- Folios 10190 and following: Civil Guard Testimony Ms MB.
- Folios 10316 and following: Civil Guard investigated statement Mr JG.
- Folios 10330 and following: Civil Guard defendant statement Mr JL.

From VOLUME XXX:

- Folios 10963 and following: Civil Guard Testimony Mr IG.
- Folios 10968 and following: Civil Guard Testimony Mr JT.

- Folios 11001 and following: Civil Guard Testimony Mr JR.
- Folios 11005 and following: Civil Guard Testimony AM.
- Folios 11008 and following: Civil Guard Testimony Mr JM.
- Folios 11019 and following: Civil Guard Testimony Mr AC.
- Folios 11199 and following: Civil Guard Testimony Mr PD.
- Folios 11224 and following: Testimony Mr JM.

From VOLUME XXXI:

- Folios 11402 and following: Civil Guard Testimony Mr CR.
- Folios 11407 and following: Civil Guard Testimony Mr LB.
- Folios 11443 and following: Civil Guard Testimony Mr XC.
- Folios 11470 and following: Civil Guard Testimony AT.
- Folios 11479 and following: Civil Guard Testimony Mr IC.
- Folios 11482 and following: Civil Guard Testimony Ms MS.
- Folios 11489 and following: Civil Guard Testimony Mr PF.
- Folios 11492 and following: Civil Guard Testimony Mr RZ.
- Folios 11531 and following: Civil Guard Testimony Mr CT.
- Folios 11542 and following: Civil Guard Testimony Ms ED.
- Folios 11562 and following: Civil Guard Testimony Mr JC.
- Folios 11565 and following: Civil Guard Testimony Mr RA.
- Folios 11573 and following: Civil Guard Testimony Mr JA.
- Folios 11589 and following: Civil Guard Testimony Mr SS.
- Folios 11654 and following: Civil Guard Testimony Mr FL.
- Folios 11658 and following: Civil Guard Testimony Mr MS.
- Folios 11661 and following: Civil Guard Testimony Mr FV.
- Folios 11718 and following: Civil Guard Testimony Mr AS.

From VOLUME XXXIII:

- Folios 12354-12355: Civil Guard Testimony Ms AE.
- Folios 12563-12565: Civil Guard Testimony Mr CM.
- Folios 12567-12572: Civil Guard Testimony Mr DG.
- Folios 12576-12577: Civil Guard investigated declaration Ms MG.

From VOLUME XXXIV:

- 12983-1988: Civil Guard defendant statement Mr JL.

From VOLUME XXXV:

- Folios 13060-13065: Motion to review of Mr JS dated 19 June 2018 against the Decision dated 12 June 2018.
- Folios 13093-13094: Decision dated 25 June 2018 dismissed motion to review Mr JJ (SEPBLAC).
- Folios 13240 and following: Motion to review Mr DP against the Decisions dated 19 and 20 September 2017.

From VOLUME XLVII:

- Folios 18535 and following: Decree opening the FGE AN dated 27 March 2016.
- Folios 18543-18579: Report 2016-101743-0015, dated 15 March 2016.
- Folios 18681-18682: 6 month extension decree, dated 12 September 2016.

- Folios 18606 and following: Decree of 31 January 2017. Requests timely proceedings to corroborate demonstrations to the Civil Guard in the framework of DI 33/16.
- Folios 18618-18640: Report 2017-101743-0018, dated 07 March 2017.
- Folios 18688-18689: Extension decree dated 13 March 2017 of the DI 33/16.
- Folios 18708 and following: Report 2017-101743-0034 dated 5 May 2017.
- Folios 18740-18751: Police statement of JB dated 6 July 2017.
- Folios 18758-18759, extension decree dated 25 August 2017.
- Folios 18764-18817: Report 2017-101743-00000081 dated 1 September 2017.
- Folios 19036-19041: Civil Guard Document 8 September 2017.
- Folios 19042 and following: File proposal from the prosecution instructor dated 7 September 2017.
- Folios 19044 and following: File decree dated 8 September 2017 and referral to CI 13.
- Folios 18532 and following: Written document from the Prosecution dated 9 November 2018.
- Folios 19045 and following: Legal Proceedings from the LAJ dated 12 November 2018.

From the VOLUME of PRECAUTIONARY MEASURES 1:

- MC 1: Folios 679 and following: Court Order dated 27 June 2017
- MC1: Folios 680 and following: Written document from the Public Prosecutor dated 29 June 2017 requesting the tapping of JS.
- MC 1: Folios 682 and following: Telephone tapping decision dated 29 June 2017.
- MC 1: Folios 704 and following: Civil Guard Document dated 3 July 2017 addressed to Barcelona Examining Court 13.
- MC 1: Folios 720 and following: Written document of the prosecution dated 7 July 2017.
- MC 1: Folios 724-729: Telephone tapping decision dated 7 July 2017.
- MC 1: Folios 873-880: Civil Guard document requesting a telephone tapping injunction dated 11 July 2017.
- MC 1: Folios 898-903: Telephone tapping decision dated 12 July 2017 from Ms RR telephone.
- MC 1: Folios 136-142: Telephone tapping decision dated 20 July 2017 for tapping and search of communications.
- MC 1: Folios 907-941: Report 2017-101743-0071 dated 14 July 2017.
- MC 1: Folios 934-940: Civil Guard Testimony Mr RF dated 28 June 2017.
- MC 1: Folios 943-947: Civil Guard Testimony Mr AP dated 28 June 2017.

- MC 1: Folios 956-960: Civil Guard Testimony Ms EV dated 28 June 2017.
- MC 1: Folios 970-976: Civil Guard Testimony Mr CC dated 29 June 2017.
- MC 1: Folios 984-987: Civil Guard Testimony Mr DC dated 29 June 2017.
- MC 1: Folios 989-993: Civil Guard Testimony Mr RD dated 29 June 2017.
- MC 1: Folios 994-996: Civil Guard Testimony Mr JM dated 27 June 2017.
- MC 1: Folios 1091-1099: Civil Guard technical report dated 15 May 2017.
- MC 1: Folios 1104-1108: Decision dated 18 July 2017 agreeing on the request in report 71 dated 14 July 2017.

From the VOLUME of PRECAUTIONARY MEASURES 2:

- MC 2: Folios 413-418: (Does not appear folioed, only folioed in the lower right margin) Telephone tapping decision dated 4 August 2017 Mr P, Mr JJ and Mr DF.
- MC 2: Folios 419-425: (Does not appear folioed, only folioed in the lower right margin) Telephone tapping decision extension dated 4 August 2017 for all those previously tapped.
- MC 2: Folios 1000-1035: Report 2017-101743-0073.
- MC 2 Folios 1036-1040: Civil Guard Testimony Mr CS dated 25 July 2017.

- MC 2 Folios 1066-1071: Civil Guard Testimony Mr JG dated 25 July 2017.
- MC 2 Folios 1072-1076: Civil Guard testimony Ms MF dated 25 July 2017.
- MC 2 Pages 1081 and following: Reading of the rights to the non-detained investigated individual Mr JN dated 26 July 2017 by the Civil Guard.
- MC 2 Folios 1083-1086: Testimony Mr JN dated 26 July 2017.
- MC 2 Folios 1087-1090: Testimony Mr JG dated 26 July 2017.
- MC 2 Folios 1097-1102: Testimony Mr JC dated 27 July 2017.
- MC 2 Folios 1103-1106: Civil Guard Testimony Mr JE dated 27 July 2017.
- MC 2 Folios 1107-1111: Civil Guard Testimony Ms AM dated 28 July 2017.
- MC 2 Folios 1120-1124: Civil Guard Testimony Mr IG dated 28 July 2017.
- MC 2 Pages 601 and following: (Folioed lower margin) Telephone tapping decision dated 8-09-17 for the telephones of NG, FS and MS, all as a result of listening to JJ.
- MC 2 Folios 609-613: Telephone tapping decision dated 8 September 2017.
- MC 2 Folios 871-875: (Folioed in lower right margin) Telephone tapping decision dated 15 September 2017.

From the VOLUME of PRECAUTIONARY MEASURES 4:

- MC 4 Pages 985 and following: (Folioed in lower right margin) Court Order of Barcelona Examining Court 13 dated 18 September 2017.

2.- Consists of that which is gathered, in **ADVANCE** of the Oral Trial, full testimony of Summary 7/2018 (formerly Preliminary Proceedings

82/2017) of the Central Examining Court No. 3 for their incorporation in the proceedings.

The information contained in the aforementioned Summary can not be separated from the procedure, since it must be guaranteed that the parties in the procedure can know, relate and use the data in such a file, due to its inseparable connection with the Special Case, as well as for the parties to be provided the necessary materials that allow them to form defensive strategies, not only to question the incriminating evidence and arguments, but also to obtain information that allows them to question the legality of the investigation in accordance with what has already been stated in the First Conclusion of this document. This document can not undertake the practice of proceedings that could be corrupted by nullity, but it is essential to know all the contents of the proceedings (which are unknown since Her Grace Ms Investigating Judge expressly impeded this party from taking knowledge of that proceeding) to determine what evidence may be useful for the defence and if there are irregularities that make the evidence introduced in the Special Case illegal due to their origin or derivation.

3.- Consists of that which is gathered, in **ADVANCE** of the Oral Trial, full testimony of the Preliminary Proceedings 1439/2017 of Barcelona Examining Court No. 7 for its incorporation in the proceedings.

Such proceedings were already requested by the representation of the defendant Ms DB in point 5 of the appeal lodged against the Court Order of 11 December 2017 (folios 823 to 825) and despite the refusal at that time to incorporate the testimony that the proceedings (Decision dated 26 April 2018 on folio 4297) it is fundamental for the defences to know

the information that would allow them to form an appropriate strategic defence against the facts that make up the allegation related to the events of 1 October 2017 at the hands, it is said, of the accused.

That procedure investigates the acts that occurred on the day of the self-determination referendum, both in relation to the accusations made against the national security force agents for injurious actions not justified by fulfilment of duty or legal coverage or based on judicial command, as well as against citizens, so its purpose includes information directly related to the purpose of the proceedings.

4.- That which, with due motivation and in **ADVANCE** of the Oral Trial, was sent by the Chamber in an official letter to the company Twitter Spain S.L. located at Calle Rafael Calvo, 18, Madrid, for them to send certification of the following points:

- The personal data that appear in the records about the user with the account @nmaquiavelo1984 and the user with the account @JDanielBaena, including the creation information for the user account and the IP connection used for that registration, as well as the certification of if the two accounts followed one another.
- The IP connection data used to post the following tweets to the account @nmaquiavelo1984:
    - 01-09-2014 with an image of a newspaper cover that reads “Barcelona for Franco's unconquered Spain”.
    - 18-03-2017 with the text “Nothing from #FindeETA. Defeat and right to conquer.”
    - 13-04-2017 with the text “Transformer of utopias into dystopias and procedural tightrope walker”.

- 20-09-2017 with the text “Put the ballot boxes on the ground. Slowly. Hands behind your head. No sudden movements. Turn around.”
- 30-10-2017 with the text “Actions of organised crime structures when they know they’re being investigated”.
- 2-11-2017 with the text “as always, poor @mossos, just like @guardiacivil or @policia have done "something” to gain the trust of the Judges and Prosecutors #JoNoSocSegador”

5.- That in which the Central IT Crimes Division of the Ertzaintza was ordered to take the necessary steps to determine the location data of the device or terminal used to post the tweets referred to in the previous Document in order to notify the internet access providers so that, in view of the IP connection data obtained in the previous Document, they can report what telephone line or data connection was used to post the aforementioned tweets, identifying the data of its owner and any other individuals associated with the contract, especially those associated with the location where the device was used or its owner (address).

The two previous Documents planned make sense and are relevant to obtaining data that evaluate the due impartiality required of the investigators of this case and in view of indicative evidence of the improper behaviour of Lt. Col. DB, in charge of the investigation of the Special Case.

Currently, the account @JDanielBaena is private and has a new registration date of September 2018, so the data to be collected must refer to the account as of January 2017. The account @nmaquiavelo1984 has been deactivated and while it was active its creation date was June

2012.

6.- That which was sent in a letter-order to Barcelona Examining Court No. 7 so that, in **ADVANCE** of the Oral Trial, by the Attorney of the Justice Administration, it could be certified if in their Preliminary Proceedings 1439/2017 the following unions act as prosecution or have requested to participate as private or public prosecution: Sindicato Unificado de Policía (SUP, Unified Police Union), Confederación Española de Policía (CEP, Spanish Confederation of Police), Unión Federal de Policía (UFP, Federal Union of Police) and Sindicato Profesional de Policía (SPP, Professional Union of Police).

7.- That which was sent in a letter-order to Central Examining Court No. 3 so that, in **ADVANCE** of the Oral Trial, by the Attorney of the Justice Administration, it could be certified it in Summary 7/2018 the following unions or associations act as prosecution or have requested to participate as private or public prosecution: Sindicato Unificado de Policía (SUP, Unified Police Union) Confederación Española de policía (CEP, Spanish Confederation of Police), Unión Federal de Policía (UFP, Federal Union of Police), Sindicato Profesional de Policía (SPP, Professional Union of Police), Alternativa Sindical Policial (ASP, Alternative Police Union), Unión de Oficiales de la Guardia Civil Profesional (Professional Union of Guardia Civil Officials), Asociación Española de Guardias Civiles (AEGC, Spanish Civil Guard Association) y Unión de Guardias Civiles (UNIÓN- GC, Civil Guard Union).

The two previous documents are transcendental for the defences to be able to prepare preliminary questions related to the investigators' lack of impartiality which may have affected their rights to the presumption of

innocence, right to defence and a process with all due guarantees, and influence the evaluation of the evidence that could unfold after the plenary session when it comes from the police investigation initiative.

8.- Consists of that which, in **ADVANCE** of the Oral Trial, is gathered from the Secretary of Government of the Hon. Supreme Court, information related to the distribution of this case and specifically certification regarding the seniority order of the Judges that made up the Criminal Chamber on the date that the Investigating Judge of the Special Case was designated, as well as regarding the appointment of the Instruction of Special Cases during 2017 to the Judges who make up the Chamber, expressing the date that each of them was assigned and the file number, stating the criteria applied to assign the Instruction of Special Case 20907/2017 to the Hon. Judge Mr PL.

In view of the news reporting irregularities in the designation of the Investigating Judge and the seemingly unreasonable lack of subjection to the established distribution order for the assignment of the Instruction of Special Cases apart from the rules contained in the Agreement of the National Council of the Judiciary dated 21 December 2016, it is necessary to learn this information to determine the existence of flaws in the procedure that impacted the impartiality of the investigative and prosecuting body, as well as to substantiate allegations of the violation of the fundamental right to the ordinary judge predetermined by the law and the right to a process with all the guarantees.

9.- Consists of that which, in **ADVANCE** of the Oral Trial, is sent in a letter-order to the Attorney of the Justice Administration from the Justice Chairman of the Instruction of Barcelona to send, prior to the sessions of the oral trial, certification regarding the distribution criteria of the on-call

proceedings 7717/2017 which led to the initiation of Preliminary Proceedings 118/2017 of Barcelona Examining Court No. 13 and, specifically, which reports on the following aspects:

- Regarding if, on the date when the aforementioned on-call proceedings were distributed, the High Court of Justice of Catalonia had approved and published Distribution Rules in which the "incoming" and "outgoing" on-call Judges were excluded from knowing about matters pertaining to acts committed outside the 72 hours prior to the on-call shift that received the complaint, and specifically if these Rules were those approved and published in 2014.
- Regarding if, on the date the complaint was presented that led to the initiation of the aforementioned on-call Proceedings, the on-call Court was Examining Court No. 9 and the following day Barcelona Examining Court No. 13.
- Regarding if, in the Certificate of Distribution enacted on 30 January 2017, any matter was assigned by means of manual assignment or if all the matters were randomly distributed through the use of software.
- Regarding which specific persons intervened in the tasks of distributing matters enacted on 30 January 2017, either by using software tools designed for the registration and distribution of matters or in any other decision affecting this distribution.
- To send the Court a copy of the distribution dossier of the aforementioned On-Call Proceedings as well as the Certificate of distribution for 30 January 2017 which shows the distribution of all

the matters received during the on-call service for incidents on 27 January 2017.

It is effectively certified today that Barcelona Examining Court No. 13 was excluded from the distribution rotation for the complaint which it assumed, and which led to the initiation of the proceedings, in accordance with the Distribution Rules approved by the High Court of Justice of Catalonia in 2014 and current in January 2017 and which accompany this written document as Document No. 34.

It is pertinent to find out the reason for this departure from the distribution rules, as well as the mechanism by which the knowledge of the proceedings was attributed to that specific Examining Court.

11.- That which has all the documentation accompanying this document and, on behalf of the Hon. Attorney of the Justice Administration, its contents are checked with that of the links summarised in its descriptions in the event that any of the other parties question this content prior to the Oral Trial.

12.- DOCUMENT of the following folios of the proceedings: 9 to 124, 164, 183 to 186, 227, 228, 244, 256 to 258, 260 to 340, 378 to 419, 450 to 455, 458, 464, 471 to 475, 497 to 508, 517, 522 to 564, 640 to 652, 688 to 713, 724 to 732, 762 to 766, 782, 796, 814 to 827, 950 to 955, 960 to 995, 1074 to 1078, 1097, 1102 to 1105, 1122 to 1143, 1253 to 1265, 1295 to 1301, 1303 to 1304, 1412 to 1420, 1435, 1436, 1499 to 1526, 1603 to 1608, 1615, 1622 to 1642, 1687 to 1695, 1829 to 1846, 2062 to 2066, 2078, 2079, 2084 to 2098, 2100, 2127 to 2132, 2142 to 2155, 2184 to 2201, 2224 to 2453, 2501, 2548 to 2556, 2569 to 2571, 2577 to 2587, 2592 to 2601, 2067, 2677 to 2695, 2712 to 2756, 2809 to 2812, 2818 to

2846, 2910 to 2922, 2964, 2968 to 2974, 3022, 3023, 3025 to 3051, 3060 (and video file attached), 3121, 3125 to 3131, 3138 to 3142, 3145, 3163 to 3231, 3251 to 3257, 3305, 3306, 3402, 3403, 3519 to 3524, 3559 to 3565, 3669, 3674 to 3676, 3682 to 3684, 4127 to 4159, 4169 to 4176, 4180 to 4191, 4265 to 4271, 4274 to 4276, 4285 to 4298, 4318 to 4328, 4390 to 4398, 4416 to 4423, 4439 to 4462, 4593 to 4679, 4713 to 4725, 4740 to 4753, 4791 to 4799, 4845 to 4864, 4953 to 4979, 5176, 5177, 5227 to 5240, 5298 to 5306, 5338 to 5359, 5378 to 5387, 5571 to 5580, 5637 to 5645, 5711 to 5739, 5744 to 5760, 5842 to 5869, 5889 to 5933, 5977 to 6047, 6082 to 6258, 6375 to 6379, 6510, 6511, 6515 to 6518, 6549 to 6552, 6596 to 6620, 6627 to 6651, 6689 to 6696, 6857 to 6860, 6893 to 6898, 6904 to 6908, 6999 to 7024, 7037 to 7042, 7068 to 7077, 7081, 7082, 7145 to 7154, 7243 to 7277, 7396 to 7417, 7429 to 7430; as well as boxes 51 to 56 with ABP reports in the Document attached to Preliminary Proceedings 3/2017 of the HCJ of Catalonia and the folders with annexes of Mossos d'Esquadra and separate piece 3 of the Mossos d'Esquadra from the same proceedings.

SECOND ADDENDUM: LIFTING THE ANONYMITY AND WITNESS PROTECTION

In accordance with the necessary revision of the witness protection statute in Article 4.1 of the Organic Law for the Protection of Witnesses and Experts (LOPT) and article 4.3 of the same legal text, as well as in accordance with Recommendations 9 (2005) and 13 (1997) of the European Council, I come to request that any type of specific protection for the witness Ms MT be lifted, request knowledge of the identity of PROTECTED WITNESS 1-O (Witness No. 15 of the Prosecution) as well as lifting any type of specific protection they have, in accordance with the

reasons given below and in case they are admitted as evidence for the Oral Trial.

a) MT

The witness protection statute may entail the limitation of the right to defence and generate an inequality of arms that is inadmissible in accordance with the protections provided by Articles 24 SC and 6 ECHR when disproportionate or unjustified circumstances are given or maintained, from which the European Council at the time dedicated a Recommendation (13, in 1997) precisely to analyse the intimidation of witnesses and its relation to the right to defence.

Given the necessary review of the suitability judgment for the protection of witnesses described below, we demand that **all protection be lifted**, given that maintaining it violates the aforementioned fundamental rights for the reasons given during the investigation and those described herein.

The protection granted to the witness Ms MT was undue and irregular and her testimony must be treated, if it is used, by the same conditions as any other witness proposed by the parties.

From the outset, the protection was granted by the Investigating Judge through an ex oficio extension of the measures requested by the Prosecution. Beyond protecting the private residence of the Attorney of the Administration of Justice, visual witness protection was provided regarding the “defence attorneys” although it may seem unusual.

In fact, visually protecting the witness from the attorneys is a clear demonstration that the goal of the measure was not to protect the witness but to confirm a bias in favour of the accuser and their arguments.

The impediments to visually confronting witnesses are always applied to

the defendants (Principle 6 of Recommendation 13 in 1997) and never with respect to their attorneys.

There is no evidence in the proceedings that the witness requested protection of any kind, nor of what risks were evaluated or reported by the witness, and in any case the Decision's reasons for protection given at the time were not specified when the measure was agreed upon, and affect the practice of a proceeding requested by this defence.

Impeding direct interrogation of the witness (which would be privileged against a very long list of witnesses) would artificially maintain her status as "victim", which we cannot accept, as it affects the lawsuit and the due equality of arms. This coincided, furthermore, with a more than questionable initiative for the comprehensive protection of Catalan[28] judges and magistrates which adds, additionally, to the campaign of artificially generating a sensation of risk and which is based on a false generalisation of isolated incidents, very far from the true driving forces of the legislation analysed, which are usually related to organised crime or gender-based violence (Recommendation 13 of 1997).

The unjustified and disproportionate witness protection makes her, in light of the Court's decision, a "victim" and contributes to the bias affecting the present proceedings. But the witness is not a victim nor has she ever acted as such when presenting herself in front of the investigation of Barcelona Examining Court No. 13, without abstention, and has demonstrated an evident ideological position contrary to the defendants.

[28]This can be seen in the recent news, https://www.leonoticias.com/nacional/poder-judicial-pide-proteccion-jueces-catalunya-20181207192005-ntrc.html which accompanies this writing as DOCUMENT No. 33.

The undue maintenance of the protection provided in the LOPT would constitute a setting during the witness's statement, with evident influence on the public opinion and the judicial body, giving an impression of risk and victim-hood, which would unduly influence the future of the case and its essential analysis from a position of strictest impartiality.

The risks that would allow the enactment of the measures in the LOPT have never been identified or justified, nor has justification for the decision been provided in accordance with articles 2 and 4.1, that is, through a reasonable consideration between the specific need for protection and the **rights of the parties to participate contradictorily in the process** as a manifestation of the right to a fair trial (6 ECHR).

No one can claim the protection of their appearance, under the excuse of the existence of a personal risk, if they are a known member of the Administration of Justice who openly shows him or herself on public social networks, offering personal photos for the public to see.

It must not be forgotten that the risk given in the LOPT must be "serious" (1.2 LOPT) and have been assessed rationally and, of course, based on objective facts that can be reviewed by the parties because they were expressed in the judicial decision.

The doctrine also reminds that it does not refer to any danger, but one that is *near*, which is to say a "near and probable" threat (CUBILLO LÓPEZ) and that the circumstance that enables the adoption of the protective measures *must be accredited and justified prima facie with a probative principle that makes it rationally presumed or foreseeable at a high level of probability* (GARCÍA PÉREZ, J.J.).

Giving a testimony without visual confrontation affects the **right to a fair**

trial, which is why the witness protection legislation requires the consideration of the measures regarding the protection of procedural rights and this is established innumerable times in the aforementioned Recommendations of the Council of Europe.

Therefore, now is the time, before the trial, to re-establish the rights affected by the undue measure, whose sole purpose was to symbolically situate the witness as a victim of certain acts, acts of which she is not a victim in need of specific protection.

b) PROTECTED WITNESS 1-0 (WITNESS No. 15 OF THE PROSECUTION)

Article 4.3 LOPT establishes that *if any of the parties requests in their provisional qualification document, accusation or defence, knowledge of the identity of the witness or expert proposed, whose testimony or report is considered pertinent, the Judge or Court that has to understand the case, **must** in the same decision that declares the pertinence of the evidence proposed, provide the first and last names of the witnesses and experts, respecting their other guarantees recognised in this Law*.

To this end, it is more than relevant that according to the ECHR *the national authorities must give pertinent and sufficient reason to maintain the anonymity of certain witnesses* (for all *Dzelili vs. Germany*) and that the sudden appearance of an anonymous witness described as a means of evidence requested by the Prosecution based on a separate and unknown proceeding, implies the creation of an evident inequality of arms and a means of impeding the exercise of the right to defence, without the resolution of grounds for the granted protection having even been taken into account in the current proceeding nor subjected to any type of judicial review by the Chamber which we address.

There is no need to add any further argument to describe how the public accusation has been handled in the proceeding, through the parallel investigation already described in the proceedings, in which the defences have not been able to act, including to propose, for the first time, the testimony of an anonymous witness as evidence in a judgment, whose identity must be revealed to the defence in accordance with the provisions, for example, of the STS dated 29 January 2015 in order to allow the exercise of the rights provided by article 4.3.III LOPT.

THIRD ADDENDUM: IMPLEMENTATION OF NEW TECHNOLOGIES

The current system of administering justice is irremediably linked with new information and communication technologies (ICT) and this party understands that the Supreme Court should be the vanguard of the technological revolution in the form of administering justice, in line with the e-Justice project and in accordance with the tendencies of our nearest geographic environment in which high-tech[29] courts have even been developed in which the technologies to the service of legal operators improve information management and facilitate the handling and resolution of processes.

At the time, the General Council of the Judiciary (CGPJ) proposed the objective that the Justice incorporate the ICT to develop, among other requirements, those of the *Charter of Citizens' Rights before the Administration of Justice* which include the need to trend towards an *electronically advanced and agile justice system*.

These trends are currently related to the management of digital

[29] In 1997, it was estimated that approximately 50 "high-tech" courts existed around the world (LEDERER and SOLOMON in Courtroom technology - an introduction to the onrushing future).

documentation (text documents, audio and video files, spreadsheets, CCTV video viewing software, electronic signatures, etc.), the presentation and telematic receipt of documents, the completion of digital adducement of proof before the Court and even the use of evidence that is the product of a computerised recreation of a hypothesis (simulation of scenarios) or virtual reality.

The digital revolution not only affects the form in which evidence is obtained in the criminal proceedings but also the way in which it is analysed, interpreted, managed and finally presented before the Court. Visual media can potentially help in understanding the evidence (see Gregory P. JOSEPH in *Modern Visual Evidence*) and are of great help in overcoming the traditional (and antiquated) dynamics of formulating interminable and cumbersome verbal allegations.

In the Oral Trial, in short, there should not be situations such as that which occurred during the investigation in which there were no technical media available to play the video files (at 1:14:20 of statement III of the witness Mr DP in which the attorney had to use a video player on the attorney's laptop) but the use of advanced technical media for the management of audiovisual evidence from the case must be allowed, as well as for the formulation of allegations with support from audiovisual documents (photos, videos, sketches, diagrams etc.).

To that end, this party requests:

1) That during all sessions of the Oral Trial, **technical media** be available in the Chamber for the exhibition of audiovisual files (a screen and technical equipment with software for playing audio and video) and documents (projection screen for documents that must be shown to witnesses or defendants), whether they are

incorporated in the proceedings or are files or documents that the attorneys (with authorisation from the President of the Court) want to exhibit as visual support of their interrogations and arguments. Such technical media must be available to the parties and allow the Court, the parties, the public audience and the witnesses, experts or defendants to view and hear the contents of the files or documents.

2) That on behalf of the Hon. Attorney of the Administration of Justice, the required means be provided to arrange all the video and audio files involved in decision in an **indexed repository** that allows the selection, management and agile reproduction of any document during the sessions of the oral trial be provided.

3) That in accordance with Article 680 LECrim and the doctrine, among others, of the ECHR judgment Sutter vs. Suiza, the required means be provided for audio and video signal during the oral trial sessions for the **real-time public dissemination** through the media in accordance with the clear public significance of the proceedings and in accordance with the fundamental right to information provided in Article 20.1.d SC and article 10 ECHR.

FOURTH ADDENDUM: LANGUAGE AND TRANSLATORS

Different measures must be implemented and guaranteed by the Court with regard to the use of languages besides Spanish (3.1 SC) which, in some way, appear or will appear in the proceedings; if these languages may be used, they will be subject to translation or interpretation, etc., in the form that allows the correct preservation of the rights and guarantees of the defendants.

In accordance with the European Charter of Minority Languages, made in Strasbourg in 1992 and ratified by Spain in 2001, the use of the co-official language (3.2 SC) must be guaranteed in criminal proceedings.

Thus, in article 91.a it establishes that the parties commit, in the legal processes to, among other measures:

- *to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or.*
- *to guarantee the accused the right to use his/her regional or minority language; and/or*
- *to provide that requests and evidence, whether written or oral, shall not be considered inadmissible solely because they are formulated in a regional or minority language; and/or*

This provision must be directly linked to the right to a fair trial (6 ECHR) and its manifestation linked to the right to self defence or the defendant's personal participation in their defence, in accordance with the case law of the ECHR and as a manifestation of the rights to due process of law, a process with all the guarantees and the right to defence (24 SC).

For all these reasons, the adoption of the following measures is expressly requested and the following statements are made:

a) That the **use of the Catalan language** by my clients be allowed in any of their interventions in the Oral Trial, that is, during the interrogation, closing statements or confrontations, in the event that it is their intention to express themselves in their mother tongue. For this purpose, the simultaneous interpretation systems necessary to allow translation to Spanish should be provided in a way that allows the oral proceedings to be carried out normally. This party will notify the Chamber in due time of the language that the defendants intend to use in each of their interventions, to the extent that this is the result of a final decision that as of now has not yet been approached in the defensive strategy.

b) That during the oral trial, a **Catalan language interpreter** be provided to assist the parties in relation to the documentation that may be subject to exhibition or confrontation during the interrogation of defendants and witnesses or in the processing of documentary evidence, and that this be in Catalan. This writing expressly challenges any translation made of documentation that is not in Spanish (in accordance with the doctrine set by the STS of 6 March 2006) that was not produced by duly identified professionals, due the existence of constant errors in the translation of documents, which was already forewarned during the proceeding's preliminary investigation.

c) That appropriate provisions be made for the presence of **other interpreters** during the oral trial for languages other than Spanish or Catalan that were used in documentary evidence proposed by

other parties or for the languages that witnesses or experts may use by choice or knowledge.

FIFTH ADDENDUM: ORDER AND ISOLATION OF WITNESSES

The order for the adducement of proof can be altered in accordance with article 701.VI LECrim by the Presidency when it is requested and conducive to a better development of the hearing.

Beyond the proper alteration of the criteria proposed here, in light of which proof is finally admitted by the Chamber, this party understands that at least two specific rules for ordering of evidence must be considered, which must alter or organise the request for proof completed by the prosecutions, to know:

a) That it is arranged such that the persons responsible, controllers or investigators of the reports of the Civil Guard or National Police **give statements before** the different agents involved in the investigations, for reasons of mere common sense, to be able to relate extensive and complete information of general scope or knowledge that must be addressed prior to the testimony of other witnesses with more limited knowledge, who could even be surrendered as sources of evidence if they are not needed due to the amount of evidence or for the benefit of a correct and agile development of the trial.

It does not make any sense, for example, to establish an order for adducement of proof in which the Investigating Judge of the Civil Guard statements gives a statement 208th (Badge no. xxx), after hundreds of witnesses that include agents acting under his orders.

b) Also, in accordance with Article 704 LECrim, we request that the

appropriate provisions be made for the **isolation of witnesses** who will make statements regarding similar or related facts that advocate for their summons in the same session of the oral trial and the isolation, above all, of those agents of national security forces who participated in the same police operations of intervention or investigation.

SIXTH ADDENDUM: OBSERVERS AND GUESTS (CHAMBER)

Beyond the need for the public dissemination of the Oral Trial as already requested, the dissemination through public media (radio or television) is not sufficient for the protection of individual rights that go beyond the right to public information and that advocate for the guarantee of the presence of certain people in the room where the Oral Trial takes place.

The defendants have the right for the oral trial to be carried out with the presence of their **family members and intimate friends** and **international observers** in the room, whose knowledge of the development of the Oral Trial cannot depend on the publication or dissemination through the media, but must be a **direct and immediate perception** of the hearing.

The observers cannot depend on the specific images that are disseminated, they should perceive the trial directly, nor can the family members and intimate friends provide emotional support if they are not there in person.

It is obvious that the accused must be able to face the oral trial with the certainty that in the court's space intended for the public there is space available for the presence of family members and intimate friends who can offer legitimate emotional support and who have a right to perceive how the trial develops in relation to the defendants with whom they have

a personal bond; with regard to the international observation of legal processes, this is a practice not only traditionally tolerated but consubstantial to the public and impartial exercise of justice, which must be able to develop in an immediate form through the observation of the trial in person.

Therefore we ask you to make the arrangements to guarantee that the courtroom of the Oral Trial has sufficient space for **each of the defendants** who this party represents to have **10 places for relatives and family members** and **5 places for international observers**, so they can be used if necessary.

SEVENTH ADDENDUM: APPOINTMENT OF ATTORNEYS

Beyond the faculties of substitution and assistance provided in article 38.2

38.2 of the General Statute of the Legal Bar, the defendants are currently acting under the technical defence of the attorney AE and the attorney LA.

EIGHTH ADDENDUM: GUARANTEES OF THE RIGHT TO DEFENCE

The physical and emotional conditions with which a defendant faces the Oral Trial, which depend on the treatment received and the environment in which it unfolds during the plenary sessions, influence a multitude of aspects related to the possibility of **exercising an effective defence** and are, ultimately, linked to the idea of the dignity of every citizen. The right to a fair trial, to defence, and to a process with all the guarantees includes the defendant's right to participate in their own defence, not only through personal testimony procedures but in a constant way in the

development of the trial, in collaboration with their technical defence.

The Court can, and should, prevent these conditions from becoming incompatible with the development and enjoyment of such fundamental rights, a task which the Court itself assumed in its Decision dated 28 September, where they say *The dignity of the accused, the conditions of their food and the habitability of their place of custody, will be duly guaranteed*.

This defence believes that among these conditions, the following should be respected:

a) Provisional release of the accused.

This representation understands that the basis of the aforementioned Decision that put the defendants inevitably in a situation of deprivation of liberty during the sessions of the Oral Trial (because a resolution that refers to the future *conditions of food and habitability of their place of custody* cannot be understood in a different way) has no reason to be unmodifiable, above all since the analysis carried out became obsolete months ago and it, as is well known, requires a constant update when it deals with the ambulatory freedom of citizens enjoying the presumption of innocence.

That is why the best way to ensure respect for the right to a fair trial is, additionally, to allow the hearing to be confronted in a situation of **provisional freedom**, which is now being requested based on all the arguments previously expressed before the Chamber and on the new circumstance that the passage of time reduces the flight risk of someone who has been in prison for some time, without prejudice to the additional precautions that the Chamber wants to impose.

b) Dignity.

If the previous request is not met, the dignity of the defendants, which the Chamber is responsible for protecting, should be protected through establishing accommodations that do not imply a **displacement and transfer**, which aggravates the conditions of physical and emotional tranquillity which the defendants must enjoy, so they would have to allow a formula that put them at the disposition of the Court in units not far from the courtroom, establishing a specific regimen of agile and safe transfers that does not submit them to the ordinary prison system which implies, on occasion, rigid and cumbersome conditions and schedules that prevent the prisoners from getting proper rest.

c) Agenda, schedules, and conditions of the Court.

In the same sense of guaranteeing the optimum quality in the exercise of the right to defence, we request an agenda of the sessions of the Oral Trial that allows coordination of the trial with the necessary **personal and professional conciliation** between the defendants and their attorneys, and to this end guarantees that the days and times dedicated to the sessions of the oral trial do not impede or hinder the need to hold working meetings between attorneys and clients, the completion of the attorneys' professional activities outside of this procedure and reduce the family impact implied by the families of the prisoners and their attorneys attending multiple daily sessions in the same week away from their homes (above all if the request in the 9th Addendum is not granted, regarding the venue of the Oral Trial).

Furthermore we request that the appropriate arrangements be made so that the attorneys can work in the Courtroom in a **physical working environment** compatible with the necessary management of paper

documentation and the use of portable computers or tablets, in any case allowing the availability of an Internet connection to access the virtual documentation repositories that cannot be brought to the Chamber on paper or in the memory of the portable computer equipment.

d) Direct attorney-client contact.

The configuration of the adversarial model of the Organic Law of the Jury Court could be considered the most modern and evolved criminal procedure model regarding the guarantees of defence and equality of arms. Article 42.2 of the Organic Law of the Jury Court (LOTJ) provides for **direct and immediate attorney-client communication** during the Oral Trial, a formula that in any case is not only suitable but essential for guaranteeing the validity of the right to a fair trial, especially in a proceeding as important as this one.

In any other criminal procedure, whether by analogy to the cited precept or by a direct application of the aforementioned fundamental and conventional right, it must be guaranteed (and so it is requested) that the defendants Mr Oriol Junqueras and Raül Romeva be placed in the Chamber (besides at times when they must temporarily occupy specific spaces to complete personal inquiry) **next to their defence attorneys**, and that they be given the work materials to contribute to their own defence (notebook and pens which can either be provided outside the Court or inside it) as well as be able to **communicate with their attorneys** while respecting the evident rules of hearing procedure, a system that in any case is in line with the expectations of this Court, for all the STS dated 16 May 2005, according to which the physical presence of the defendant in the Oral Trial *acquires significant relevance (...) as well as the constant possibility for direct communication with their Attorney which otherwise*

may seriously limit their capacity for advisory and assistance.

NINTH ADDENDUM: LOCATION OF THE ORAL TRIAL

Guaranteeing the due exercise of the right to legal assistance is related, as already demonstrated to the Court, to the possibility of articulating an agile attorney-client relation during the proceedings, avoiding impediments of any kind that might reduce the effectiveness of the technical defence.

The administration of justice is not a task that can be separate from the need to protect the public interest and, specifically, the normal need to rationalise resources and avoid unnecessary costs.

Both of these reasons are related to the need to provide a "better administration of justice" which is linked, on occasion, to the necessary geographical proximity between the court and some elements or individuals whose interests are considered relevant in the case.

In fact, that need is due to the articulation of possibilities of relocation of jurisdictional bodies in accordance with articles 665 LECrim and 268 and 269 LOPJ (Spanish Judicial Act).

This would be necessary to preserve the rights of the accused (closer proximity to their families and their attorneys, who for obvious reasons cannot move their offices or homes to Madrid permanently during the trial) and to reduce the costs of the proceedings given the evident distance between the location of the Court and the majority of the elements associated with the lawsuit (defendants, attorneys, witnesses, etc.), the trial hearing could be held in BARCELONA in the facilities of Judicial Power suitable for it.

TENTH ADDENDUM: TRANSCRIPTIONS

Despite the fact that during the investigation this party was denied the possibility of obtaining the transcripts of the statements in the decisions, **ordered by the Investigating Judge**, the plenary offers a new opportunity to request what would clearly be a favourable tool in the technical defence of the defendants.

The transcription of the statements was ordered by the Hon. Investigating Judge in the first statements taken, from folio 379 following. At page 470, Mr JA was expressly designated to complete these transcripts for anyone who required the material. It is recorded in the Court Order dated 29 November 2017 that these transcriptions were being made (folio 684). The transcriptions have been requested repeatedly (folios 509, 511) and on other occasions the Hon. Investigating Judge has reiterated that the process of transcription is being executed and that they will be delivered as soon as possible (see folios 1123, 1248 and 4792).

As the Court has already demonstrated, the succinct minutes contain **omissions and errors** and could not serve as a comparison if one of the parties intended to use them for the purposes provided in Articles 714 and 730 LECrim, and ultimately the transcription facilitates the tasks of both parties both for the study of the proceedings and for the exercise of technical defence in all proceedings, including the Oral Trial.

Furthermore, the recordings have **defective sound levels** (as shown in the nearly inaudible interrogation of the Investigating Judge in Audio File III from the witness statement of Mr DP), and a proper use of the material would only be possible through a professional transcription process.

As the Court well knows, the reference in the current Article 230 LOPJ is

not applicable, due to a systematic interpretation, to the summary statements of the criminal proceedings, nor does its diction regarding “oral proceedings” and “hearings” (230.3 LOPJ) include the taking of statements to defendants and witnesses in criminal proceedings. And there is no possible way to streamline the process in the plenary phase which permits the use of transcribed minutes of the summary statements for their use, if necessary, in the processing of article 730 LECrim or article 714 LECrim.

In the criminal proceedings, the requirement to record is only recommended for the oral trial, a legal provision not altered by Organic Law 7/2015, since this is the means of facilitating the review of the first instance hearing by the review Court. Regarding the summary statements, the only exceptions that argue for the requirement of recording are those related to the advance evidence or the statements and examinations of minors or especially vulnerable witnesses.

Failure to guarantee the delivery of the requested transcripts **greatly impedes the defence tasks**, as well as the normal development of the hearing, requiring the defence to spend extraordinary time revising or making their own transcriptions of the judicial declarations, especially when they requested the transcription and assigned it to a specific professional.

In the face of the Oral Trial, the non-existence of transcriptions turns the hearing into a cumbersome procedure if the literal text of such proceedings can be quickly checked by referring to the transcription. In fact, the criminal process dispenses with the examination of audio support in other cases (after signing 588 LECrim, with the need to

transcribe telephone tapping passages), and it is also relevant to consider the use of transcriptions in article 46.5

46.5 Thus, LOTJ is part of the most modern procedure designed for the Spanish legal system (the adversarial system of the Jury) and therefore more in line with a fair management of the process adapted to the new realities of the criminal procedure.

We therefore request that a literal transcription of all the statements recorded during the investigation be submitted to the parties, lest it cause an unnecessary defencelessness.

ELEVENTH ADDENDUM: CHALLENGE TO EVIDENCE

A) INTELLIGENCE EXPERT

In their Indictment, the prosecution proposed Civil Guard Experts xxx and xxx, whose relevance was justified through an explanatory letter dated 26 November 2018, in compliance with the Chamber's requirement in the Court Order of 6 November 2018.

This evidence suggests a clear transgression of the rules that regulate the evidence to give expert status to elements that would clearly be considered documentary evidence and generate an inadmissible defencelessness context.

It is well known that the right to evidence is not unlimited and that the parties, in addition to having the right to practise anything conducive to accrediting the facts sustained in their prosecution or defence statements, also have the right **to not support the adducement of impertinent evidence**, and to that end the Court itself issued the aforementioned Court Order as a way of protecting the defences from lack insufficient grounds for the means of giving evidence and to

specifically avoid having to analyse its relevance without sufficient information. It is clear that the Court cannot allow the unlawful adducement of proof, nor the adducement of proof known to be useless or impertinent, given that this would violate the right to a due process of law, a process with all the guarantees and defence, and would irremediably mislead the plenary debate.

Our radical opposition should be understood as a resource analogous to the one provided in the most modern criminal procedures (such as article 36 LOTJ) and in accordance with the political-criminal tendency to build tools to shield the plenary from the adducement of impertinent proof (thus in the different proposals for integral reform of the criminal process) or as the necessary challenge of expert allegations that must be made in the processing of the statement of defence.

The “intelligence” expert referred to is clearly impertinent and should therefore by challenged in the provisional qualification process.

The Court is well aware that the expert is a means of proof whose singularity lies in considering the opinion of experts in a certain technology, expertise or art, who offer the Court data and information that is outside the common knowledge of citizens and magistrates in particular. Article 456 LECrim thus provides for such assistance with explicit reference to *scientific or artistic knowledge*.

From the grounds for the evidence offered by the prosecution, the following is clear:

- That it is not determined what **characteristics** make the requested agents experts, beyond *having a special knowledge of the investigation*, a vague formula that applies to any member of the

judicial police.

- That it is expressly stated that only **one** of the agents would author the expert report.
- That (in full violation of the requirement issued by the Court) the specific **documents** that would be the object of the expert evidence **are not identified**, a fact that makes the admission of such evidence impossible, as its concrete purpose is undetermined.
- That proof is sought regarding documents attributed to individuals that the proposer **does not request as witnesses**, with a clear desire to avoid contradiction and demonstration of a clear value bias.

As stated by the STS dated 16 February 2007, *the police agent exclusively dedicated to investigating a specific area of crime may have more information about it than the court that judges a specific case related to this area. But* ***this greater global knowledge does not, by itself, determine a qualitatively or specialised knowledge*** *in the literal sense.*

The requested agents do not have the characteristics of experts and their status as members of the police investigation situates them, at the same time, at risk of a lack of objectivity and impartiality. As it is stated in the 3rd National Court Judgment (SAN) of 26 September 2005 (in the case of Al Qaeda) regarding the actions of police investigators, this *strongly implicates the person who carries it out, reducing their ability to create a critical distance regarding their own actions, thus, it is inevitably coloured with objective partiality* to continue questioning the expert character of the so-called "intelligence reports", a line of argument that coincides with that of the STS of 31 May 2006 (speaker Monterde Ferrer).

In the first place, it should be considered if the position and characteristics of the alleged experts are, in reality, those of witnesses, since it is not determined what expertise or artistic or technical knowledge they have that provides them a special condition, to then evaluate the evidence in accordance with the ordinary rules.

To this end, it should be remembered that article 297 LECrim establishes that *The reports edited and statements made by judicial police officials, as a result of the enquiries they have made, are considered complaints for legal purposes. Other statements that they render must be signed, and they will be valued as witness statements as they refer to facts of their own knowledge.* In accordance with article 717 LECrim, *the statements made by authorities and officials of the judicial Police will be considered witness statements, and appraised as such according to the rules or rational criteria.*

The police agents acting in reports form part of the chain of complaint and, if they have direct knowledge of the facts, may act as witnesses.

The proposed evidence, in its vagueness and ambiguity, is therefore definitively a way of introducing a **police report**, as well as the elements and sources of proof associated with searches, investigations of open sources, statements, etc.

His proposal as an expert demonstrates the will to unduly supplant the free judicial assessment of documentary evidence, which would result in a breach of the basic rules of procedure, creating defencelessness. Among other considerations, the formulation of the proof and the lack of a sufficient convincing response to the judicial requirements for grounds and pertinence **prevents the formulation of counter-expert methods**,

since it is unknown which specific documents, and in what ways and based on what technique, are the object of the supposed expertise.

It is not possible to resort to irregular *short-cuts* that reduce the guarantees of the process as developed in the interesting Dissenting Opinion of Mr Perfecto Andrés Ibáñez to the STS of 25 October 2011, since the intelligence expert *is atypical. For the reasons already given and because, not only is it not legally foreseen, but it openly breaks the consolidated legal and doctrinal criteria of the means of obtaining evidence. Hence, contrary to what is said, it is not that anything prevents its use, but that it* ***lacks legal legitimacy*** *and all theoretical support.* ***It is only justified for the merely pragmatic purpose of conferring a privileged rank of police archive data to the lawsuit, which, if strictly in accordance with the law and aforementioned case-law, will have no other value than as a report.***

In accordance with articles 456 and 457 LECrim, it is inappropriate to carry out expert evidence on the Judges' own expertise or expect the experts to replace judicial assessment or incorporate subjective assessments that are useless and distort the debate.

Nor can the existence of a constant police practice be defended, which has generated a special and transcendent understanding, beyond that of any average person, regarding the typology of the facts that are being judged in the proceedings. The "intelligence expert" is ordinarily linked with terrorism or organised or international crime.

The Court itself will examine and assess any document proposed by the parties and, therefore, the intelligence expert cannot be admitted nor practised in the Oral Trial, under penalty of corrupting the proceedings

and irregularly conditioning its development, with an inequality of arms regarding the defence, who are unaware of even the scope of the evidence.

We challenge this evidence, requesting that it not be admitted, with an express invocation of the violation of the right to a fair trial (6 ECHR), should it be admitted, in accordance with what is expressed in the explanation of this Addendum.

B) ILLEGAL EVIDENCE DERIVED FROM THE PRELIMINARY PROCEEDINGS 118/2017 OF BARCELONA EXAMINING COURT NO. 13 AND THE PRELIMINARY PROCEEDINGS 32/2017 OF CENTRAL EXAMINING COURT NO. 3

Due to the existence of fundamental rights violations that determine the nullity of the means of obtaining evidence for the allegations, whether in its generation or its derivation of illegal evidence in connection with illegality, this party requests that all the documents from the proceedings of Barcelona Examining Court No. 13 (Preliminary Proceedings 118/2017, currently Summary 5/2018) and the Central Examining Court No. 3 of the National Court (Preliminary Proceedings 32/2017, currently Summary 7/2018) be excluded from the case, except those that have been expressly requested by this party as documentary evidence (Document No. 1) to precisely justify the existence of such defects of nullity.

The documents used in judicial decisions are the following:
From the main case, folios 520-555, 658-662, 663 (CDs), 1392 (channel dump), 1393 (CD), 1527-1599, 1730-1781, 1879, 1880, 1881 (CD), 1882-1952, 2607-2657, 2658 (CDs), 2745, 3258-3292, 3259 (DVDs), 4389-4398, 4454 (DVDs), 5175-5239, 5240 (CDs), 5246 (CDs), 5432-5707, 5708 (CD), 5741, 5742-5810, 6494, 6495, 6496 (DVDs), 6515-6522, 6625-6652, 7083,

7087, mp4 documents attached to the Public Prosecutor's Indictment, Additional Document Report No. 1 of the Indictment of the State Attorney.

Separate document pieces 6, 8, 9 and 11.
Separate secret pieces of the Decision of 11-01-2018 (CTTI commandments) as well as the piece of the Decision of 30-03-2018, the following matters: Document UPJ 4213 from Barcelona CI 13 on TNC space assignment; "Medios" ("Media") folder, Reports and Annexes 2017-101743-107 about embezzlement from Barcelona CI 13; "Unipost" folder, Reports and annexes 2018-101743-07 addendum to embezzlement from Barcelona CI 13; Reports and annexes 2017-101743-113 addendum to embezzlement from Barcelona CI 13, Reports and annexes 2017-101743-108 about embezzlement from Barcelona CI 13; Reports and annexes 2018-101743-23 about embezzlement from Barcelona CI 13; "Cartelería" ("Signage") folder, Reports and annexes 2018-101743-20 about embezzlement from Barcelona CI 13; Reports and annexes 2018- 101743-009 about embezzlement from Barcelona CI 13; "Diplocat" folder, Reports and annexes 2018-101743-016 about embezzlement from Barcelona CI 13.

From Court Record, Volume 1, pages 775 to 955.
Expressly contesting the admission of any other report that is not strictly documentary evidence.

C) OTHERS

The **video files** on the two DVDs presented by the Prosecution as a document annex to their written document dated 19 April 2018 (folios 4439 and following) are expressly contested, since there are indications of their manipulation and editing and the defence has not been permitted to obtain data about the origin and authorship of such videos in

accordance with what was requested in the procedure of article 627 LECrim.

As seen in folio 4450 of the written document of the prosecution (probably for lack of revision) it contains a first person note that says "*this is a very long, almost 17 minute video of a television program*. *I've only selected a few seconds, between 6:10 and 6:27 (...)".*

TWELFTH ADDENDUM: WITNESSES / DEFENDANTS

Due to the existence of multiple criminal procedures with the same or similar purpose as this one, some of the witnesses proposed by the parties could be **defendants** in other procedures, could have previously been defendants, or be called to give a testimony related to the facts that entail a risk of the assumption of liabilities for their participation or personal knowledge. Such situations deserve a specific protection incompatible with the general obligations for witnesses (433 and 707 LECrim).

Beyond the information that could be given to such witnesses when making their statements, if any of the questions from the parties imply a possible answer of self-incrimination, all those witnesses that formally hold the status of defendants or accused in the proceedings related with those being prosecuted here, must be informed of the possibility of attending the act of giving evidence with the assistance of their respective **technical defences**, so they can consult them in case of doubt and, in any case, will not have to be informed of the obligation to tell the truth nor of the obligation of giving evidence or the consequences of not doing so (716 LECrim) beyond the call that the President of the Chamber may make for them to do so.

To this end, such witnesses should be informed that they hold a condition materially analogous to any other defendant or accused in the process, with the rights inherent to that condition (118 LECrim), independently of their formal appearance as witnesses.

The condition of some of the parties' proposed witnesses as defendants is derived from the nature and grounds of the evidence offered by the parties in their respective written documents, or is public knowledge or derived from a mere analysis of the data of the proceedings.

All this is to respect such participants' rights to their own defence, to personal protection against any pressure for the exercise of such right, and to guarantee the production of evidence, if applicable, under standards that permit their valid judicial assessment.

THIRTEENTH ADDENDUM: LOST DOCUMENTS

That an urgent response be given to the requests made by the parties to recover the disappeared or lost writings and documents of proceedings, moving on to the reconstruction of the case with the express indication of whether the documents were annexed through chronological addition to the decisions (that is to say, at the point in time when they were presented and with exceptional numbering that does not alter the existing numbering) or at the end of them with current numbering.

For all the reasons stated above

I PETITION THE COURT that they admit the adducement of proof that this party plans to use in the Oral Trial and agrees in accordance with the previous addenda, leading to the provisional release of my clients.

In Barcelona for Madrid on 15 January 2019.

Attorney AE Sol. CL