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MOTION ON THE CATALAN REFERENDUM TRIAL

After gathering in Madrid on the morning of February 9th, 2019 and discussing the impending **Catalan Referendum Trial**, which will begin in the Spanish Supreme Court on February 12th, 2019, Avocats Européens Démocrates-European Democratic Lawyers has reached the following **CONCLUSIONS**:

1.- There is concern that all the **procedural guarantees** may not be met during the trial, due to the following reasons:

- The first trial session (February 12th) was set on February 1st. This does not give enough **time for the defence teams to prepare** properly.
- The different defence teams do not have **full access to the total information** on the trial. For instance, they do not know the identity of the police officers who will testify during the hearings, only their identification numbers.
- Most of the **witnesses** during the trial will be police officers. Several of the witnesses proposed by the defence teams have been rejected by the Court.
- Nine out of the twelve defendants are in **pre-trial detention** and have been in this situation for several months, which clearly difficults the preparation for the hearings. They are currently being held in prisons in Madrid, hundreds of kilometres away from their defence attorneys and families.
- There are three accusing parties in this trial: the State Prosecutor, the State Attorney and the far right-wing political party, Vox; each of them with their own accusation and agenda.

2.- There is concern regarding the **prohibition of arbitrary detention**:

- **We call for the immediate release of the nine defendants in pre-trial detention.** We believe they are in prison due to political reasons and call for this situation to stop¹.
- In regards to the imprisoned elected officials, we would like to point out that the recent European Court of Human Rights (ECHR) Selahattin Demirtaş v. Turkey judgment²,

1 Moreover, Amnesty International, the World Organization Against Torture and Frontline Defenders have called for the immediate release of Jordi Cuixart. Frontline Defenders considers him a human rights defender (<https://www.frontlinedefenders.org/en/case/jordi-cuixart-pre-trial-detention>). The first two organizations have also asked for the release of Jordi Sánchez.

2 <https://www.courthousenews.com/wp-content/uploads/2018/11/DEMIRTAS-TURKEY.pdf>

issued on 20 November 2018, concluded that Turkey had violated Article 18 of the Convention (limitation on use of restrictions on rights, i.e., the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed) and the right to vote and hold office, with regards to Demirtaş' pre-trial detention. There is an undeniable similarity to the case of the imprisoned elected officials.

- The nine defendants who are in pre-trial imprisonment will be **transferred daily back and forth from the prisons they are being held at to the Court**. This implies waking up at 6 am on a daily basis, travelling during at least two hours a day, and being held in separate quarters during breaks in each session. This will happen on a daily basis for three months. It can have negative implications on the ability to defend oneself. The conditions of transport from Catalan prisons to the detention centres in Madrid have been denounced in the past on the basis of being mocked and ill-treated by police officers³. We would like to remind the public that the ECHR in the recent *Mariya Alekinha and others v Russia* judgment⁴, the Court considered that the conditions of the applicants' transport to and from the trial hearings exceeded the minimum level of severity and amounted to inhuman and degrading treatment in breach of Article 3 of the Convention.

3.- There is concern regarding the interpretation of the **right to peaceful assembly** carried out by all of the accusations (State Prosecutor, State Attorney and far right-wing political party Vox):

- A **non-restrictive interpretation** of what is “**violence**” is extremely dangerous for our fundamental rights and civil liberties. One must tread carefully on these grounds.
- According to the accusations, on September 20th, 2017, thousands of people gathered on the street, in a demonstration, which blocked the work the police was carrying out and resulted in damages in two police cars. These events, according to the prosecuting parties, warrants **charges of rebellion or sedition**, which can imply prison sentences that could reach up to 25 years per defendant.
- If what took place on this date was an act of peaceful civil disobedience, as all defence teams claim (something which shall be determined during the outcome of the trial), we believe that any conviction could result in a violation of the European Convention of Human Rights.

4.- This is not a Spanish affair, but a European one, which can have serious effects on the rule of law. If **peaceful civil disobedience** is criminalized, all social movements in Europe must fear for their future existence.

5.- There is concern regarding the **right to a fair trial**:

- **Members of the Supreme Court** are elected by the Government of Judges (CGPJ), which is **elected by the Spanish Parliament**. This can have a serious effect on the independence and political inclinations of different magistrates.
- We challenge the **jurisdiction of the Supreme Court** to try this case instead of the natural judge.

3 https://www.youtube.com/watch?v=37Vu1d_KCu0

4 <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-184666%22%5D%7D>

- The fact that the defendants are being tried in the Supreme Court eliminates the possibility of appealing. An eventual conviction would have to be taken up to the **Constitutional Court**, with the procedural limitations this presents.

Bearing all these facts in mind, the AED-EDL believes it is of vital importance that a well-informed and respectful of the Spanish judicial system **international observation** is carried out during the entire duration of the trial. Therefore, members of AED-EDL from different European countries will be traveling to Madrid during the following months in order to attend hearings, engage with other international observers and study in depth the legal aspects of the Catalan Referendum Case from a Human Rights perspective.

In Madrid, on February 9th, 2019

Founded in 1987, the Association of European Democratic Lawyers (AED) is a confederation of trade unions and lawyers' organizations with the same democratic, modern and humane ideals in Europe.

The AED intends to defend the rights of citizens by preserving the independence of lawyers with regard to any political, social, economic or ordinal power.

As a professional organization, its international purpose is to ensure respect for the rights of the defense and, in particular, to safeguard the physical integrity and political and economic freedom of lawyers.

The association also works to ensure that all individuals have access to national and international judicial appeals, particularly those who are in the most precarious situations and whose basic rights are not recognized or poorly recognized.

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