

## **Report John Philpot**

### **International Trial Watch. Observation of the trials of the Catalan 12**

#### **Introduction**

I am defence lawyer having practised in the International Criminal Tribunal for Rwanda, the International Criminal Court and in the national jurisdiction in Quebec. My curriculum vitae is attached. I speak and understand Spanish

I attended the trial of the 12 Catalan political prisoners on 19, 20, and 21 February 2019. This week, the Accused were making their statements and answering questions according to Spanish law. Some agreed to answer questions from the Prosecutor (Fiscal) and from the Government attorney. Some refused. Some declared themselves to be political prisoners.

This report is not an academic paper and summarily describes major issues which make this trial unfair. The order of my comments is arbitrary.

I listened to the answers provided by four accused:

- Jordi Turull
- Raul Romeva
- Josep Rull and
- Jordi Sanchez

All these men made a good impression on me speaking clearly about the facts of the referendum campaign. I consider them noble men (and women whom I did not hear) acting in a dignified manner in very unpleasant circumstances.

One suggestion: the accused sometimes speak too quickly. The public is watching the trial on television and their comprehension is important. The same applies to the judges of the Tribunal Supremo who have to be convinced. This is best done by slow methodical testimony.

#### **The Trial**

The Spanish state is treating these twelve politicians and social leaders fundamentally as a single criminal organization as if they were drug traffickers or an organised crime syndicate.

It is dangerous to use criminal charges to indict leaders of a political campaign. When members of an alleged criminal organization are on trial, an individual accused person can be found guilty for the acts of other members of the organization. This far-reaching criminal liability can be very unfair when the trial is purely political and unrelated to criminality as we know it.

This mega trial is a tool of the Spanish state which is attempting to decapitate the Catalan nation by imprisoning its elected leaders and highly respected social leaders. How will future leaders act in the fight for national sovereignty or other forms of political organization knowing that they run the risk of long prison terms if they go one step too far or even if some citizens go one step too far? This type of trial places the Catalan nation in a political straitjacket.

The essence of this trial is to criminalize the exercise of civil and political rights, namely,

1. the right to self-determination of the Catalan people and to decide on their collective future by referendum,
2. the right to hold opinions without interference,
3. the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds,
4. the right of peaceful assembly,
5. the right to freedom of association with others, and
6. the right and the opportunity to take part in the conduct of public affairs (directly or through freely chosen representatives;

These rights are guaranteed by Spanish Law, particularly by the International Covenant on Civil and Political (ICCPR) rights at articles 1, 18, 19 and 21. This Covenant was adopted by Spain in 1976 and ratified in 1977. Completing the process of ratification automatically incorporates these legal provisions into Spanish law. Similarly, the European Convention on Human Rights at articles 9, 10 and 11 guarantees similar rights and binds Spain. The 1948 Universal Declaration of Human Rights at article 18, 19 20, and 21 provide solid protection to human rights violated by the Spanish state as a result of this unfair trial faced by the Catalan leaders.

Any limitations on such rights must be minimal according to the Syracuse Statement entitled STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS.<sup>1</sup> This document is attached to this report in English, French and Spanish.

Criminalising non-violent political action and threatening long prison sentences is shameful for the Spanish State. The issues should be settled by political negotiation and not by vicious repression.

### **Denial of the fundamental right to appeal to a higher court.**

Article 14(5) of the ICCPR provides that a person charged with a criminal offence has a right to have his conviction and sentence reviewed by a higher Court according to law. Since the ICCPR is incorporated into Spanish law, Spain must provide a court of appeal to review any conviction.

The Tribunal Supremo in Spain is the highest court in the land. There is no appeal or review of a conviction or a sentence when a person is tried before the Tribunal Supremo.

The Catalan 12 have no right of appeal of a conviction or a sentence. As such, I would argue that the entire process must be abandoned since a trial with no right of appeal cannot be held in Spain.

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<sup>1</sup> COMMISSION ON HUMAN RIGHTS Forty-first session Item 18 of the provisional agenda Distr . GENERAL, E/CN .4/1985/4 28 September 1984, Note verbale dated 24 August 1984 from the Permanent Representative of the Netherlands to the United\_ Nations Office at Geneva addressed to the Secretary-General  
Original : ENGLISH

Indeed, the right of appeal is an important and modern legal provision in the ICCPR. A Judge or a Bench of 7 judges can make mistakes. To err is human. A trial court can be influenced by political pressure: this is a serious risk in this trial. And a court can be dishonest. I am making no such allegation about this trial yet. A trial bench, knowing that there is an appeal process above it, is often more careful than a court whose decisions cannot be appealed. Therefore, the ICCPR at its article 14(5) provides for appeal. The right to appeal in criminal matters is a fundamental civil right.

I will not deal here with applications before the European Court of Human Rights and Freedoms except to note that such an application is not an appeal in a national jurisdiction provided for in the ICCPR. The European Court has no right to fully revise a criminal trial.

The failure to provide a right of appeal is a violation of a fundamental human right and no saving provision in the ICCPR can justify this violation.

### **Violation of the presumption of innocence and the right to be released before trial.**

Universally, an accused is presumed innocent and should not be punished before conviction. Release on bail is the best way to avoid “premature punishment”. If there is a risk of absconding or a serious risk of committing new crimes, release on bail can be refused. All of these accused can be released with electronic controls and there is no risk of them holding a new referendum in the near future. A small number of the accused are not detained. For the remaining majority, the court could have imposed strict conditions on the accused and allow them to be released on bail. The applicable provisions providing for the presumption of innocence are: ICCPR articles 9(3) and 14(2) and the European Convention articles 5(3) and 6(2).

This premature detention of the accused is just one more factor showing that these trials are unfair and purely political.

### **Language issue. No testimony in the mother tongue of the accused**

All or almost all the accused have as Catalan as their mother tongue. The Court requires them to testify in Spanish. We all know that anyone can express themselves better in their mother language. This is a serious violation of fundamental human rights.

### **Inappropriate trial conduct of the Presiding Judge**

The Presiding Judge Manuel Marchena Gómez referred to the accused, Jordi Sanchez simply as Jordi when speaking to his lawyer on 21 February. It is very inappropriate to refer to an Accused by his first name. It is demeaning and insulting. It was likely a simple lapsus, but it shows a potential lack of respect or the mindset of Judge Marchena Gomez.

## **Rush to Complete the Trial**

There are major risks when there are twelve accused since there appears to be a time issue with an apparent rush to complete the trial. This can create risks to the accused in the exercise of their right to full answer and defence.

On Wednesday, 20 February, the court sat until well after 10 p.m. The accused were driven to their prison one hour from Central Madrid and were given sandwiches about midnight. They were required to get up at 6 a.m. in order to be transported to trial the next morning. This was apparently since the Court had planned to finish the first step of the trial quickly so that former Prime Minister Rajoy could testify on a date pre-set by the Court, namely on Tuesday 26 February. It would be fairer for the Court to treat the accused with more respect. How can an accused prepare a hearing when he/she gets “home” at midnight and gets up at 6 a.m.

I noted that presiding Judge Marchena Gomez does not always preside well. At times, he lets the Prosecutor (Fiscal) make long meandering questions, wasting time and then he seems to cut the defence short when it wishes to make a point or show a video. This is an issue which should be verified for the rest of the trial.

## **The charges: general conclusions**

### **I. Rebellion** (free translation of the article 472 of the Penal Code)

The code reads as follows: (our underlining)

“Those who rise violently and publicly for any of the following purposes are guilty of the crime of rebellion:

1. To repeal, suspend or modify the Constitution in whole or in part.
2. Removing or dispossessing all or part of their prerogatives and A political social movement treated as a criminal gang powers to the King or the Regent or members of the Regency, or force them to execute an act contrary to their will.
3. Prevent the free celebration of elections for public office.
4. Dissolve the Cortes Generales, the Congress of Deputies, the Senate or any Legislative Assembly of an Autonomous Community, prevent them from meeting, deliberating or resolving, uprooting any resolution or subtracting any of their powers or powers.
5. Declare the independence of a part of the national territory.
- 6.º To replace the Government of the Nation or the Governing Council of an Autonomous Community with another, or to use or exercise for itself or deprive the Government or Governing Council of an Autonomous Community, or any of its members of its faculties, or prevent or restrict their free exercise, or force any of them to perform acts contrary to their will.
7. To subtract any kind of armed force from the obedience of the Government.”

There must be a violent uprising which the Accused participates in for him or her to be criminally liable. The term “participates in” can be interpreted broadly but the intention of the accused must be that his “followers” commit violence.

This charge is obviously rather ridiculous since the entire referendum campaign was peaceful to the extreme and the only real violence was used by the police of the Spanish state. The Prosecutor (Fiscal) should be ashamed of this charge. I hope the rebellion issue will not distract the attention from the more serious crime of Sedition.

Several of us observing the trial felt that the rebellion charge could remove the focus from the real issues.

## **II. Seditio (freely translated)**

Article 544 of the Penal Code reads as follows: (our underlining)

“Those who, without being included in the crime of rebellion, rise publicly and tumultuously to prevent, by force or outside of legal means, the application of the Laws or any authority, official corporation or public official, are the defendants of sedition. legitimate exercise of their functions or compliance with their agreements, or administrative or judicial decisions.”

This is a more dangerous charge because it does not require violence. Here we see the simple use of criminal charges to criminalize the referendum process and the civil disobedience which was apparently used to protect the voting stations and guarantee the right to vote is some voting stations. These are purely political charges being used against the collective and individual rights of the Accused:

1. the right to self-determination of the Catalan people,
  2. the right to hold opinions without interference.
  3. the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds,
  4. the right of peaceful assembly shall be recognized
  5. the right to freedom of association with others,
  6. the right and the opportunity to take part in the conduct of public affairs (directly or through freely chosen representatives;
- III. misappropriation of public funds

I won't treat this charge. It is a political charge used politically against the referendum process. I have not really thought about this charge very much.

- IV. There is a fourth charge of disobedience about which I have no comment or knowledge.

For all these reasons, there is no chance of a fair trial for the Catalan 12

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