

*International Court of Justice*

# *Puigdemont vs Spain*

*Director:* Elena Jalil Martínez

*Moderator:* José Ángel Mayoral Olivares

*Sergeant at arms:* Fernando Marco Mendoza Bedolla



PASMUN35

## *INTRODUCTION*

The Court is the principal judicial organ of the United Nations. It was established by the United Nations Charter, signed in 1945 at San Francisco (United States), and began work in 1946 in the Peace Palace, The Hague (Netherlands). The Court, which is composed of 15 judges, has a dual role: in accordance with international law, settling legal disputes between States submitted to it by them and giving advisory opinions on legal matters referred to it by duly authorized United Nations organs and specialized agencies. (Frequently Asked Questions, 2018) The official languages for ICJ are English and French. The court only allows the 192 states part of the U.N. to present cases before it, it does not allow individuals, non governmental institutions, or any private entity.

Former president of Catalonia and one of the principal figures in the search for independence of the same region, Carles Puigdemont was arrested for charges of rebellion and misuse of public funds on March 2018 in Germany. Puigdemont was elected as 130th leader of the region on 2016, with the premise of fighting for independence. Thus the new president searched for international recognition and was positive the European Union would respond in his favor.

Catalonia decided to declare themselves as an independent state at the ending of 2017 which triggered the 155 article of the Spanish constitution letting the government take control over the region. With this power in hand Puigdemont was dismissed from his charge. After these events he fled the country, with multiple charges under his belt (treason being the harshest), and in March of 2018 was caught in Germany. All of this began to affect the "public image" of Puigdemont.

Puigdemont has begun to lose the approval of "his" people, right now his disapproval is near the 60%, with Quim Torra (his successor) receiving the support of the people now. Torra has become a key for the process either being a powerful ally for Puigdemont or a dreadful threat. The public disapproval represents a challenge to overcome and consider when the German final verdict is given. A legal outcome (specially on international levels) often creates a big conflict between people and the authorities if the majority is against it. (Bolaño, 2018)

Regarding the German law, which is processing and analyzing the case as a mediator, they discarded Spain's charges for treason, saying that the requirements do not match Puigdemont's actions. According to the double incrimination system of the European Union, Puigdemont can only be trialed for crimes recognized by both Spanish and German jurisdiction. Also, the extradition proposed by Spain was discarded. (Werkhäuser, 2018)

International lawyers presented a petition against Spain in the name of Carles Puigdemont to the United Nations Human Rights Committee for "violating" his rights. Recently The UN has supported the demand of Puigdemont against Spain. Lawyers consider the State violated three articles of the International Covenant on Civil and political rights (ICCPR), from which Spain is part of. The Human Rights Committee ensures compliance with the ICCPR (*El diario, 2018*).

On the basis of the additional optional protocol to the Covenant, signed by Spain in 1985, the Committee may receive complaints from citizens who believe their rights violated in countries that have ratified the Protocol and to enact measures that would have to be enforced. The United Nations Human Rights Committee has admitted the demand presenting by the ex president of the Generalitat in early March against Spain by violate political rights. This topic has become of big importance for Catalonia, Spain, and now the European Union.

### *HISTORY OF THE PROBLEM*

Carles Puigdemont was a full time journalist until he became part of Catalan electoral alliance in 2006, which later would become a part pro-independence movement. Puigdemont began his career by being elected mayor of Girona in 2011 breaking the dominance of the Socialist Party of Catalonia that lasted about 32 years. Puigdemont added cards to his political career by becoming chairman of the Association of Municipalities for Independence and being elected a member of the regional parliament. (Who is Catalan President Carles Puigdemont?, 2018)

Puigdemont was elected president of Catalonia on January 10, 2016; without declaring oath to the spanish constitution nor the king, Felipe VI. Puigdemont showed a defiant face to the critiques from the central government in Madrid. Puigdemont searched for a referendum process which the government declared as

unconstitutional, regardless the process was still done showing a majority favored independence.

On October 27, 2017 Catalonia declared independence from Spain; just after some hours had passed Puigdemont was dismissed from the president and his regional government was dissolved by the Spanish first minister as well as elections were set to be on December 21, 2017; on the 30th, Puigdemont and five catalan ministers were charged for rebellion and misuse of public funds, on the same day they flew to Belgium. (Who is Catalan President Carles Puigdemont?, 2018)

On the election of December 2017, Puigdemont resulted “re-elected”, despite not even being in the country. Puigdemont then sent a letter to the spanish government to open “talks” outside of Spain, Mariano Rajoy (the spanish prime minister) rejected the letter.

On March of 2018 Puigdemont was arrested in german land, and is still being retained in Germany after the extradition asked by the spanish government failed. “After the news of his arrest broke on Sunday, thousands of demonstrators poured on to the streets of Barcelona. They chanted "Freedom for the political prisoners" and "This Europe is shameful!" as they headed to the offices of the European Commission and the German consulate” (Carles Puigdemont, former Catalan president, detained in Germany, 2018). The juridical process against Puigdemont is still taking place on Germany, after german authorities did not agree on some of the charges Puigdemont was accused of; thus rejecting the extradition to Spain and acting as an intermediary between both parts under the European Union’s regulations.

## *CURRENT SITUATION*

### **I. Pablo Llarena vs Puigdemont**

1. On March 23, 2018; Pablo Llarena, a magistrate in Spain's Supreme Court dictaminated an apprehension order against Puigdemont with the charges of rebellion and embezzlement. Also, he rectified both the European and the International ones. Those events contradicted the ones occurred on December 5, 2017; in which all the apprehension orders of the ex-president were annulled by the Supreme Court.

2. By July 16, 2018; Carles Puigdemont, Quim Torra and Jordi Sánchez are calling for a new transversal political movement in hope of making such movement a new political party within Catalonia in hopes of “rebuilding the republic” and keeping alive Puigdemont’s governmental ideals.

## II. Legal Frame

Both rebellion and embezzlement can be found in Spain’s penal code as the following:

1. Article 472 (Rebellion): Those convicts of the rebellion crime are the ones who violently & publically uprise with any of the following motifs:
  - ❖ To derogate, suspend or modify (partially or totally) the Spanish Constitution.
  - ❖ To remove (partially or totally) the King, the Queen, the Regent or the Regency of their duties and faculties; or to do something against their will.
  - ❖ To impede a free voting process for public charges.
  - ❖ To Dissolve, impede a reunion, a deliberation, a solution or subtract any attribution to:
    - General Courts.
    - Congress of Deputies.
    - Senate.
    - Any Legislative Assembly of any Autonomous Community.
  - ❖ To declare any national territory as independent.
  - ❖ To subtract any armed force to the Government obedience.
2. Article 252 (Embezzlement): The people punishable by the sanctions of the Article 249 or 250 are the ones with the faculties to manage a patrimony and damage it by the excess of power manifested by them.

### Chapter VII: of Embezzlement

3. Article 432 (Embezzlement): The authority who commits the felony stated in Article 252 will be punished with the following sanctions:
  - 2-6 years in prison.
  - Special disqualification for public charges.
  - Special disqualification for the use of the passive suffrage right for 6-10 years.
- ❖ Prison time goes from 4-8 years and absolute disablement for 10-20 years if:
  - A great damage against public service occurs during that time.

- The damage caused exceeds €50,000.
4. Article 433 (Embezzlement): The mentioned acts present in Article 432 will be punished by 1-2 years in prison and an economic sanction of 93 days-12 months and all the special disqualifications listed in such article for the time of 1-5 years only if the damage is below €4,000
  5. Article 434 (Embezzlement): If the person guilty of the typed actions present in Articles 432-435 would effectively & legally fix the damage against the public patrimony, or actively collaborates with the authorities to provide proofs for the identification and/or capture of other convicts; the judges and tribunals will lower the final sanction from 1-2 degrees.
  6. Article 435 (Embezzlement): The dispositions of this chapter are extenze to:
    - The ones in charge on funds, rent or effects of public administration.
    - The particulars who are legally designated as depositors of funds.
    - The administrators of seized goods.
    - The administrators who alter the payment order of credits established by law.

### III. German intervention

1. On March 25, 2018; the german police and the Spanish National Intelligence Center collaborated to stop Puigdemont. However, he was set to provisional arrest in Neumünster prison. Later on, he was set free on bail for €75,000. Then, the Schleswig-Holstein Tribunal said that according to german law, neither the rebellion nor the high treason crimes were in order. According to them, the embezzlement charges still have a legal basis.

### IV. European Union Court of Justice

1. Is one of the seven institutions of the EU and is in charge of the legal system surrounding the EU. The tribunals guarantee the proper legal interpretation of law within the countries that belong to the group. It also regulates how legal are the actions of the other institutions within the EU and determine if the member states have followed the proper law. Finally, they check on the Union Law whenever national Judges ask the Court to.

2. As German support for Puigdemont is clear, judge Pablo Llarena stated that the moment the final verdict favors the ex president, he will go to tramit a preliminary ruling. A preliminary ruling is a way magistrates can demand the European Union to legally solve their doubts previous to a verdict.
3. Juridical Basis:
  - a. European Union Treaty (EUT): Article 19
  - b. European Union Operation Treaty: Articles 251 & 281
  - c. Euratom Treaty: Article 136

## *UN ACTIONS*

A team of international lawyers has presented a petition against Spain in the name of Carles Puigdemont to the United Nations Human Rights Committee for "violating" his rights .The UN has supported the demand of Puigdemont against Spain. The UN's Human Rights Committee is a body of independent experts that monitors implementation of the ICCPR by the states who are party to it, which are obliged to submit regular reports on how the rights are being implemented. The Committee examines each report and addresses its concerns and recommendations to each state in the form of concluding observations.

The Human Rights Committee ensures compliance with the International Covenant on Civil and political rights signed by 170 countries, including Spain. On the basis of the additional optional protocol to the Covenant, signed by Spain in 1985, the Committee may receive complaints from citizens who believe their rights violated in countries that have ratified the Protocol and to enact measures that would have to be enforced (*The guardian*).

The ex president international lawyers consider that the State violated three articles of the International Covenant on Civil and political rights (ICCPR).

- Article 19 (*The guardian*), which protects the right to the peaceful political expression in favor of the independence of any territory;
- Article 21 (*The guardian*), which recognizes the right of peaceful assembly and prohibits imposing restrictions on the exercise of this right in the interest of national security;
- Article 25 (*The guardian*), which grants the right to all citizens of a country to hold for public office.

The UN is in track to study the case of Puigdemont against Spain. The United Nations Human Rights Committee has admitted the demand presenting by the ex president of the Generalitat in early March against Spain by violate political rights. The committee has requested the Spanish state that within a maximum of six months rule on whether it should continue processed the complaint by Puigdemont. The resolution of the case could extended more than one year. Puigdemont did not include in its application a request for action precautionary, so the Committee has not urged Spain to guarantee political rights. The committee has asked the ex president to indicate "the type of measures" that it would like to obtain from Spain in the event that it is finally concluded that its political rights have been violated

UN human rights experts have weighed in on the escalating row over Catalonia's independence referendum, warning the Spanish authorities that their "worrying" efforts to halt Sunday's poll appear to violate fundamental rights and risk stifling debate "at a critical moment for Spain's democracy".

The intervention by two specialists working for the UN human rights council comes as senior Catalan politicians urge the EU to step in to address Spain's worst territorial crisis since its return to democracy four decades ago. Although the referendum has been declared illegal by both the Spanish government and the country's constitutional court, Catalonia's pro-independence regional government is pushing ahead with the vote in the face of ever sterner countermeasures from the courts and the police.

## *POSSIBLE SOLUTIONS*

After a critical analysis of the case Puigdemont vs Spain, the International Court of Justice has deliberated possible resolutions for each of the political parties;

### 1. Solutions in favor of Puigdemont

- A. Any search for a resolution must start with the national dialogue that many prominent Catalans have called for;
  - ❖ But this is unlikely to be generated spontaneously by the principal parties involved.
- B. International intervention will therefore be critical in reducing tensions and stabilising Spain;

- C. Diplomatic pressure should be applied on Rajoy to recognise the Catalanian government as a legitimate interlocutor, and to move more decisively away from any semblance of adherence to a Francoist ideal of unity;
- D. Progressive forces in the Spanish Socialist party should be encouraged to speak out in favour of dialogue, and against the destabilisation of democracy in Spain by any party, including the central government.
- ❖ Dialogue must go beyond the current binary debate. It should explore a variety of potential relationships between Catalonia and the central state government, and embrace the possibility of constitutional reform
- ❖ It might contemplate a second referendum, requiring a two-thirds supermajority, to be held in late 2018;
  - Meanwhile, the Catalan and Spanish governments alike should lose no time in reversing the economic and social policies that have inflicted suffering on the Catalan working class (The guardian).
  - It would be enough that the PP, supported by the PSOE, was willing to explore the possibility of a legal referendum, even non-binding, or at least, the possibility of modifying some laws to make it viable.

## 2. Solutions in favor of Spain

- A. The PP and the PSOE could trust that internal tension, along with the pressure of legal actions against their leaders, will end up weakening, if not ruining, the independence movement;
- B. The legal procedures proposed by the judge Pablo Llarena should be followed to delay Puidgemont's triumph in court in order to get a new strategy;
- C. Look for support from legal systems who also classify the ex-president as a criminal to fight back the social pressure;

## 3. Both political parties

- A. All parties must acknowledge that the brutalisation of civilian populations, whether through direct police action or even greater economic austerity, will further undermine Spanish democracy.

## REFERENCES

- Bolaño, T. (23/06/2018). La mañana en la que Torra traicionó a Puigdemont. In <https://www.larazon.es/espana/la-manana-en-la-que-torra-traiciono-a-puigdemont-IA18811090>
- Frequently Asked Questions. (2018). In <http://www.icj-cij.org/en/frequently-asked-questions>
- La ONU admite la demanda de Puigdemont contra España. (23/03/18). In [eldiario.es](https://www.eldiario.es/catalunya/politica/ONU-admite-demanda-Puigdemont-Espana_0_754524632.html). Retrieved from [https://www.eldiario.es/catalunya/politica/ONU-admite-demanda-Puigdemont-Espana\\_0\\_754524632.html](https://www.eldiario.es/catalunya/politica/ONU-admite-demanda-Puigdemont-Espana_0_754524632.html)
- Puigdemont v Spain, the petition to the UN Human Rights Committee. (02/03/18). In [El nacional](https://www.elnacional.cat/en/news/puigdemont-v-spain-un-human-rights-committee_244431_102.html). Retrieved from [https://www.elnacional.cat/en/news/puigdemont-v-spain-un-human-rights-committee\\_244431\\_102.html](https://www.elnacional.cat/en/news/puigdemont-v-spain-un-human-rights-committee_244431_102.html)
- Schwartz, M. (03/04/18). In *Carles Puigdemont: What happens now*. Retrieved from: <https://www.politico.eu/article/catalonia-independence-carles-puigdemont-what-happens-now/>
- Werkhäuser, N. (06/04/2018). Puigdemont en Alemania: restricciones para la Justicia española. In <http://www.dw.com/es/puigdemont-en-alemania-restricciones-para-la-justicia-esp%C3%B1ola/a-43288439>
- Who is Catalan President Carles Puigdemont? (26/03/18). Retrieved from: <https://www.aljazeera.com/news/2017/10/catalan-president-carles-puigdemont-171001122719197.html>



PASMUN35