

Case 9- Social leader and candidate to the Presidency of the Catalan Government Jordi Sànchez under pre-trial detention.



On his website, from jail, Mr. Sànchez writes:

“I entered pre-trial detention by a court’s order on 16 October 2017, and now I find myself waiting for a trial, accused of rebellion and sedition.

According to the judge I am indirectly responsible for a violence, that in spite of never having existed, he says that I imagined and assumed it as unavoidable. It looks like a joke but it is not. This is the grounds for the accusation of possible rebellion. Kafka would not have imagined it better. The problem

Image from www.elnacional.cat 16-02-2018

is that we are not dealing with any Czech author’s novel, but with the investigation of the Supreme Court of the special cause 3/2017, by which we can be sentenced to up to 30 years in jail. These court proceedings are the payback for the 1st of October. It is the punishment that the powers of the Spanish State are inflicting upon us for having dared to defend the *right to decide*; which is the specific way in which in Catalonia we refer to the right to Self-determination.”

1. Description of the facts;

Jordi Sànchez i Picanyol, a social leader, was the President of the Catalan National Assembly (ANC) at the moment of his detention. He was detained under the charge of sedition in connection with the facts occurred on the 20th September (see on section 2), and detained after a hearing on the 22nd September in Madrid. Challenge to jurisdiction, as well as all the appeals filed against the committal order, the pre-trial detention, etc. were dismissed.

After the 21st December Catalan Elections, imposed by the Spanish Government under Spanish direct rule from the Spanish Government in Madrid, by means of Constitution art. 155 in place since 27th November, Mr. Carles Puigdemont (number 1 on the pro-independence list *Junts Per Catalunya*) was proposed as the candidate to the Presidency of Catalonia's Government, and then he took to exile in Belgium. Spain did not allow Mr. Puigdemont to exercise his political rights to political representation from abroad, so another candidate was needed. Mr. Jordi Sanchez (the second on the same list) was then (6th March 2018) proposed candidate to the Presidency of Catalonia's Government.

On the 21st March he filed a claim to the UN Human Rights Committee where he asked for interim measures to be able to exercise his political rights. On the 23rd March the Human Rights Committee admitted Mr. Sànchez' case and accepted the interim measures, asking Spain to comply with them. Spain did not follow the UN Committee request and did not allow Mr. Sànchez to take part on the vote for the Presidency of Catalonia in the Catalan Parliament.

2. Before the facts

On the 20th September the Spanish Police arrived to the premises of several Catalan Governmental Institutions searching them and detaining public civil servants and high rank officials. Thousands of citizens gathered in front of the places where searches were taking place in support of the Catalan Institutions and of the Referendum of Independence to be held on the 1st October. The biggest concentration (up to 40.000 people) was in front of the Department of Economy and Finance. One of the many social, civic and political leaders that went there too, was Jordi Sànchez who -together with Jordi Cuixart (the leader of the organization Òmnium Cultural) - tried to prevent any violent incidents from taking place and asked people to keep calm and to go back home by midnight, in order to let police and judicial officers to leave the premises whenever they would have finished their work.

Although the Spanish police left their cars outside the building open and with some unattended and visible weapons inside, did not accept the invitations made by the Catalan police to enable them to leave through a secure passage (as the Judicial Secretary did), etc. no significant incidents took place during the hours the search lasted.

3. The outcome of the facts:

Today Mr. Jordi Sànchez, together with other 9 social and political Catalan leaders, is still in jail on pretrial detention, for facts that many say do not match the crime they are accused of.

Mr. Sànchez was democratically elected as number 2 of the Junts Per Catalunya list by Catalan citizens on the 21D Election imposed by the Spanish Government under direct rule, but he was not allowed to exercise his political rights. Spain continues not following the United Nations human rights organizations' recommendations, like it did before and after the 1st October 2017, by not complying with Interim measures accepted by the Human Rights Committee regarding Jordi Sanchez's communication, as requested by the Committee to Spain.

Still in pre-trial detention more than one year after his arrest, Spain's Supreme Court has vetoed the access of all appeals for protection of his constitutional rights filed by MR Sànchez to European justice by systematically accepting all of them, to be later shelved and unresolved. This has been denounced by a manifesto (see below) signed by Mr. Jordi Sànchez and Mr. Jordi Turull

(the spokesperson of the Catalan Government dismissed by the Spanish State after the Declaration of Independence by the Catalan Parliament on 27 October 2017). Both politicians started a hunger strike on 1st December 2018 in order to raise awareness and denounce the irregularities in their treatment by Spanish justice 'raise awareness' of unfair treatment by Spain and to denounce that Spanish courts are blocking their access to European justice. Their hunger strike ended on 20th December. Both, Mr. Sànchez and Mr. Turull considered its aims reached as the Spanish Constitutional Court stopped its blockade to appeals for protection of constitutional rights eventually reaching European justice.

4. Laws & good democratic practices violated by Spain:

Spain is violating the principle that pretrial detention is a measure of last resort and it should, therefore, be applied only exceptionally.

Spain has neither respected the principle that prisoners should be in prisons close to their domiciles and families at least until the direct rule main responsible, the Partido Popular, has finally been ousted from power. Mr. Sanchez and the other prisoners were more than 500 kilometres far from home for more than eight months.

Based on good faith, state parties to any Human Rights Convention should feel bound to comply with their bodies' recommendations, even if they are not binding. The Human Rights' Committee will take into account the State's answer.

Spain is violating the International Covenant on Civil and Political Rights and other Conventions connected.

Several United Nations human rights bodies have warned Spain many times, like, for instance, the UN special rapporteur on freedom of opinion and expression, the UN Special Rapporteur on the right to peaceful assembly and association or the High Commissioner of Human Rights in his speech on the 7th March 2018 before the Human Rights Council when he said *"I remind the authorities (of Spain) that pre-trial detention should be considered a measure of last resort. I encourage resolution of this situation through political dialogue"*.

5. References:

5.1 Links to relevant press articles related and other:

A chronology of the 20th September facts. La Vanguardia (Spanish):

<https://www.lavanguardia.com/politica/20170920/431423116122/cronologia-20s-inflexion-referendum-1-o.html>

The UN Human Rights Committee accepts Sanchez's claim, elnacional.cat (in English):

https://www.elnacional.cat/en/news/un-spain-guarantee-sanchez-political-rights_251232_102.html

Article about Mr. Jordi Sanchez with statements made by Rafael Ribó, Catalan Ombudsman, thenational.scot (in English):

http://www.thenational.scot/news/15921353.Sanchez_the_worst_treated_of_jailed_Catalans/

On Interim Measures requested by the UN Human Rights Committee, La Vanguardia (In Spanish):

<https://www.lavanguardia.com/politica/20180405/442205619645/las-decisiones-del-comite-de-derechos-humanos-de-la-onu-no-son-vinculantes.html>

A documentary on the facts of the 20th September:

https://www.youtube.com/watch?v=LVKbl4_ufYU,

Same with Spanish subtitles:

<https://www.youtube.com/watch?v=5bN8ZM-V4Jo>,

Same with English subtitles:

<https://www.youtube.com/watch?v=do5KQV5Qgow> .

Statement made by the UN High Commissioner on Human Rights on the 7th March 2018. (in English):

<http://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=22772&LangID=E>

End and goals achieved of the hunger strike of Jordi Sànchez and Jordi Turull , CCMA News (in Catalan):

<https://www.ccma.cat/324/sanchez-turull-forn-i-rull-abandonen-la-vaga-de-fam/noticia/2894035/>

Web of Jordi Sànchez himself with his words from jail about his arrest and pre-trial detention (in Catalan):

<https://jordisanchezpicanyol.cat/>

5.2 Relevant legal documents / reports related:

- Art.20 of the Spanish Constitution article which regulates the protection of freedom of expression in Spain (in English).

http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/const_espa_texto_ingles_0.pdf

- European Convention of Human Rights, arts. 10 and 11, on freedom of expression and to peaceful assembly (in English).

https://www.echr.coe.int/Documents/Convention_ENG.pdf

- Arts. 19, 20, 21 Universal Declaration on Human Rights, regarding freedom of opinion and expression, right to peaceful assembly, right to participate in political life.

https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

- (Arts. 9.3, 19, 21, 25) International Covenant on Civil and Political Rights regarding pre-trial detention, freedom of opinion and expression, freedom of peaceful assembly, right to participate in political life.

<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

- Hunger Strike Manifesto:

We denounce:

The blockade of European justice that the Constitutional Court imposes upon us. Timely access to the courts without delay or unnecessary obstacles is a right that every person has. Failure to exercise this right with full guarantees and in fair conditions can lead to irreparable damages and damages to fundamental rights.

The cause investigated by the Spanish State on the Referendum of October 1, evidences a lot of affectations on our fundamental rights, including the presumption of innocence, freedom, political rights and the rule of law, a judicial process with all due guarantees. The violations of the European Convention on Human Rights and the International Covenant on Civil and Political Rights are quite prominent in many of the resolutions that both the Supreme Court and the National Court have issued against us since October 16, 2017, when the first pre-trial detention orders were issued.

Our determination to have a fair, lawful trial is stronger than ever. We have not ceased to appeal all those violations of our rights that the Spanish courts have committed. But it is the international courts, and in particular the European Court of Human Rights, where today we deposit the trust to get justice.

The Constitutional Court (CC), however, blocks our access to European justice. The action of the CC is as simple as blatant: to accept 100% of our appeals for constitutional protection of fundamental rights, to be processed later on in order not to resolve any of them.

According to official data of the CC, the accepted number of appeals ranged between 1% and 1.5% of the total number of those presented. In our case, they are filed 100%, then forgotten in a drawer. The Spanish legislation (Criminal Procedure Act) and the doctrine of the same Constitutional Court, stipulate that the appeals against pre-trial detention orders must enjoy preferential processing and must be resolved within a maximum period of 30 days. The first appeal for constitutional protection of our fundamental rights, accepted by the Constitutional Court against the pre-trial detention order decreed by the National Court, was filed on November 22, 2017, more than 365 days ago. An unjustified delay, and more so if we keep in mind the records of quick resolutions resolved by the Constitutional Court in several occasions, where it has met even on a weekend and only 24 hours after its intervention has been requested.

We ask for an impartial and diligent Constitutional Court, which should not impede the exercise of our rights. We denounce the blockade that the Spanish Constitutional Court de facto imposes upon us to access the European Court of Human Rights (ECHR). We reaffirm our determination, in accordance with the European Convention on Human Rights, to fully exercise our defence rights. We will never give up on our right to a fair trial.

We do not ask the Constitutional Court for any treatment of favour. But we do not passively accept any discrimination or unwarranted procrastination. The question is not even that the Court would rule in our

favour, but simply that the appeals presented would be unblocked (by being not admitted or by simply being rejected). Only in this way, will the road to access European justice be opened to us. We are well aware that the longer it takes for us to access the European Court of Human Rights, regaining our freedom will take longer as well.

We denounce the blockade of European justice imposed on us by the Constitutional Court. And we do so with all the strength and dignity of a line of political action strongly rooted in nonviolence. Thus, we will resort to one of the few legitimate forms of protest that being imprisoned allows us; by conducting a hunger strike.

We will not do it against anyone, but in favour of creating awareness and fostering action to prevent the acceptance of something that is not normal as normal. The irregular functioning of the Constitutional Court is of severe seriousness in a State of Law. And that must appeal to all democrats, whichever their political choices are.

We ask for the attention and support of all the democratic people of Catalonia, Spain, Europe, and the World. We invite you to preserve the civic and peaceful attitude that has made us so strong over these years. We urge the "Smile Revolution" to flourish through events that will continue to be celebrated in Catalonia in the form of concentrations, "yellow dinners", and concerts in the coming days and weeks. And we also ask for our hunger strike not to alter the spirit or celebration that these dates, close to Christmas and New Year's Eve, bring to the majority of us.

We are grateful, finally, for the solidarity of all women and men who feel called and committed to the effective defence of rights and freedoms, personal and collective.

Together for dignity and until freedom is reached!

Jordi Sànchez and Jordi Turull

Lledoners, December 1, 2018