

Catalan Independence Leaders Sentenced in Madrid to Heavy Jail Terms

Thursday 24 October 2019, by [FIDLER Richard](#), [NICHOLS Dick](#), [PASTOR Jaime](#) (Date first published: 22 October 2019).

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Introduction:

The savage sentences handed down by Spain's Supreme Court against nine Catalan independence leaders have been denounced by political leaders in Quebec, including Premier François Legault. In the forefront are the deputies of Québec solidaire, who will present a motion this week in the National Assembly condemning the repression and reaffirming the right of self-determination of peoples.

"Jailing elected members because they exercised their democratic duty does not make good sense," said QS deputy co-leader Manon Massé. She was responding to a letter sent to QS by the president of the Catalan parliament asking them to find a way to help in resolving the political conflict in Spain. Massé, who had visited Catalonia in 2017 at the time of the independence vote, testified by videoconference in April during the trial of Jordi Cuixart, leader of one of the social movements supporting independence.

Campaigning in Canada's federal election, Bloc Québécois leader Yves François Blanchet called on the leaders of the other parties, starting with Prime Minister Justin Trudeau, to denounce the heavy sentences imposed on the Catalan leaders. Trudeau refused, arguing that it involved an internal Spanish affair. He invoked the same neutrality in 2017 when Spanish police beat Catalan voters who sought to exercise their right to vote. At the time Jagmeet Singh, newly elected leader of the New Democratic Party, denounced Trudeau, saying the right to self-determination was one of the most important rights.

In the article below, Dick Nichols reports on the massive protests that have erupted in Catalonia in response to the court sentences. Nichols is the Barcelona-based European correspondent of *Green Left Weekly* [[1](#)], from which the article is reproduced, with thanks.

Nichols' article is followed by extensive excerpts from an article by *Viento Sur* editor Jaime Pastor [[2](#)] critically dissecting the meaning of the Spanish court's judgment, and in particular the parts in which the court attempts to distinguish the Catalan case from those of other national minority peoples in states of the geographical North, starting with Quebec. My translation from the Spanish.

- **Richard Fidler**

Vindictive Sentence in Catalan Leaders' Trial Unleashes Tsunami of Protest

Dick Nichols

The gap between the 75%-80% of Catalans who uphold their country's right to self-determination, and the Spanish elites and parts of Spanish society that do not want to know anything about it, was already very wide before October 14. But on that day, when the Spanish Supreme Court condemned nine Catalan political and social movement leaders to a total of 99.5 years jail, it most likely became unbridgeable.

Following the sentence of the leaders for their role in the October 1, 2017 independence referendum, popular outrage in Catalonia immediately exploded in mass protests involving tens of thousands of people. They occupied Barcelona airport, imposed road blocks on major highways, demonstrated in huge numbers outside Spanish government offices and began "Marches for Freedom" on Barcelona from five provincial cities. Every imaginable Catalan social and sporting organization, from Barcelona Football Club to chess associations, has issued statements condemning the sentences. On the nights of October 15-16, police and small groups engaged in running battles in central Barcelona, as smoke rose from burning rubbish bins.

On October 16, Spanish Socialist Workers' Party (PSOE) acting Prime Minister Pedro Sánchez appeared on television to warn that security forces would act "firmly, serenely and proportionately" in the face of violence.

To his right, People's Party (PP) leader Pablo Casado demanded the declaration of a state of emergency in Catalonia, while Citizens' leader Albert Rivera called for an end to Catalan self-rule under article 155 of the Spanish constitution.

One of the main instruments coordinating these responses is the Democratic Tsunami platform, anonymously run by activists from the October 1 referendum, and coordinated via a Telegram channel that, at the time of writing, had attracted 300,000 subscribers.

Punishment Without Crime

The unanimous verdict of the seven Supreme Court judges that set off this still expanding wave of protest was that nine Catalan leaders - seven former ministers and social movement leaders Jordi Sànchez and Jordi Cuixart - were guilty of "sedition" in preparing the October 1 referendum. For this 18th century crime, long deleted from the penal codes of many other European states, they were sentenced to jail terms ranging from 9 to 13 years.

The harshest sentence was handed out to former Catalan vice-president Oriol Junqueras as "leader of the sedition." Former ministers Raül Romeva (foreign affairs), Dolors Bassa (social welfare) and Jordi Turull (minister of state) came next with 12 years: along with Junqueras they were also found guilty of "embezzlement."

Former Catalan parliament speaker Carme Forcadell incurred 11.5 years jail for allowing the chamber to vote on the referendum's enabling law, after being instructed by the Spanish Constitutional Court not to do so.

The “sedition” of former Catalan interior minister Joaquim Forn (11.5 years) consisted in undermining the ability of the Catalan police to deliver and enforce Spanish state court orders.

Former territory minister Josep Rull was found guilty of denying a Spanish Civil Guard ship mooring facilities and of making public buildings available as voting centres.

As for Òmnium Cultural president Cuixart and former Catalan National Assembly president Sànchez, their “sedition” was proven by the fact that they had called demonstrations against Civil Guard searches and urged people to defend voting centres against police and Civil Guard attempts to impound ballot boxes.

Along with these nine, who have already been held in preventive detention for up to two years, the court found former ministers Carles Mundó (attorney-general), Santi Vila (business) and Meritxell Borràs (education) guilty of “disobedience,” fining each €60,000 and banning them from standing for public office for 18 months. The nine jailed leaders have been banned from standing for public office for the term of their sentences.

Why This Verdict?

The verdict is the predictable result of the pressures operating on the Supreme Court and its chief judge Manuel Marchena. The chief pressure was for the trial to produce an exemplary punishment of the Catalan leaders. They had humiliated the Spanish state by successfully organizing a unilateral independence referendum after 18 failed attempts to negotiate a Scottish-style referendum with successive Spanish governments.

A measure of the viciousness of the sentences is to compare them to those arising from the failed 1981 coup attempt. The average punishment for the military and Civil Guards who tried to reimpose the Francisco Franco dictatorship then was six years jail: the sentences of the Catalan leaders average 8.3 years.

The Supreme Court judges were doing the work set out for them by the previous PP government of Mariano Rajoy. According to a leaked WhatsApp message by PP Senate spokesperson Ignacio Cosidó, its Second Chamber, which heard the case, was controlled “via the back door.” There was no way its judges, even their “progressive” minority, were going to find the Catalan leaders innocent, or guilty only of disobedience (which carries no jail sentence).

There Was No ‘Rebellion’

However, the heavy sentences the court was always going to impose have to be defensible in law, not only within Spain but especially before a European Court of Human Rights - which in 2018 upheld nine out of ten appeals against Spanish court decisions. This pressure to find a plausible legal foundation for their decision meant the judges had to discard the “rebellion” charge against the Catalan leaders.

This indictment was originally brought by the investigating magistrate Pablo Llarena and was backed by the Spanish prosecutor-general’s office and the “popular prosecution,” the ultra-right party Vox. (The “popular prosecution” is a Spanish institution originally designed to allow the representation of community or public interest.)

Dropping the charge of “rebellion,” which a majority of Spanish jurists had already declared inapplicable, was also probably the price of a unanimous verdict between judges of different political temperaments.

It was also a political imperative. It will help Pedro Sánchez maintain the myth that Spain is a “law-governed state” with an independent judiciary and it will also help the European Union and its member states, fearful of any Catalan threat to the EU status quo, sustain the same fiction.

In the days after the verdict, spokespeople for the European Commission and the British government robotically repeated the line from Madrid.

Caught in Contradiction

The dropping of “rebellion” comes at a price, however, because the whole Spanish-patriotic view of the October 1 referendum, from King Philip down, is that it was a deliberate, rebellious assault on the Constitution.

Sensitive to the angst their appeal-proofed verdict would cause, the judges devoted about 200 pages of the 493-page judgement to arguments against the “rebellion.”

Yet, in adopting the “sedition theory,” the judges fall into a painful contradiction. Their decision says, for example, that October 1 did not involve “preconceived, deliberate and functional” violence aimed at achieving Catalonia’s separation from the Spanish state, but was rather an attempt to pressure it into negotiations.

“The over-excited citizens who believed that the positive result of the so-called referendum would lead to the hoped-for horizon of a sovereign republic were unaware that the right to decide had changed into an atypical right to bring pressure.”

But if that argument is valid against “rebellion,” how is it not also valid against “sedition”? The only difference in Spanish law is that “rebellion” is a crime against the constitution and “sedition” a crime against public order.

The judges’ answer was to smother the contradiction in lurid fictional accounts of the events of 2017. These are based on the well-rehearsed evidence of Spanish National Police and Civil Guard officers, whom Marchena “spared” from defence cross-examination, backed by visual evidence, during the trial.

In their decision, it is the huge peaceful demonstrations and non-violent protests of 2017 that become “sedition.” This ruling opens the door to any protest activity, like trade union pickets or organized attempts to stop evictions, being regarded as “seditious.”

In an October 16 interview in the Catalan daily Ara, Jordi Sánchez said: “The sentence unequivocally lies. It doesn’t specify any detail of the supposed strategy of sedition. Not one confirmed meeting, not one email, only declarations in public ANC [Catalan National Assembly] events and the calling of demonstrations.

“The Supreme Court judges’ hostility toward us has betrayed them. Their animosity toward us has leaked out in the sentence in the form of false statements to justify the prison terms.”

Offensives Launched

The verdict has also been the signal for new offensives from both sides of the Catalan-Spanish State struggle.

The Spanish judiciary immediately banned convicted Catalan leaders from standing in the November 10 Spanish general election and judge Llarena reissued a European arrest warrant for the

extradition of former Catalan president Carles Puigdemont from Belgium.

The PSOE government went on an offensive to persuade other countries of the immaculate character of the Spanish legal system. Cabinet members with foreign languages made themselves available for interviews on whatever international channels would have them.

On the Catalan side, the enormous, growing tsunami of mass protest started to roll.

All this is taking place three weeks out from the Spanish general election, in which Catalonia will dominate as never before. In Jordi Sànchez's words:

"They believe that they will terminate people's sentiments by beheading those they think are leaders of the process.

"They are having the opposite effect."

Dick Nichols



A Ruling Against the Right to Decide

Jaime Pastor (extracts)

A reading of the 23 pages of the judgment devoted to rejecting the claim to the right to decide (199-222) reveals clearly the pirouettes resorted to by the Supreme Court (SC) in order to disqualify it. Notwithstanding its statement that "it is not our job to offer - or pursue or insinuate - political solutions to a problem with deep historical roots" (referring obviously to Catalonia's relation to Spain), it immediately goes on to reject the defence's allegations, since accepting them "would be used to affirm, in opposition to a monistic vision of sovereignty that is typical of historical constitutionalism, a constitutional pluralism, a diffuse and shared sovereignty including a co-sovereignty transcending rancid concepts affected by the passage of time."

Well yes, ladies and gentlemen, if we analyze the present and global political reality, it does not support a monistic or unilateral vision of sovereignty, since what we are witnessing is a now irreversible crisis of the sovereign national-state paradigm. In the framework of neoliberal globalization what has occurred is an intertwining of sovereignties and jurisdictions within an hierarchical inter-state system that in turn is increasingly fusing with the major economic powers around a *lex mercatoria* común under which most states are reluctant to recognize internal national and cultural diversity, and above all are draining it of democracy and popular sovereignty. Is not the reality of the European Union a confirmation of that "diffuse and shared" sovereignty, which has led even the states of the Eurozone to renounce one of their most symbolic powers, that is monetary

sovereignty? [...]

It is in this reality of an institutional architecture that a multilevel governance is developing and expanding on a global scale, especially around the hard core of politics – economics and finance, civil and military security, etc. – shared by the IMF, the World Bank, the central banks, NATO, the G8 and the United States. So it is truly sarcastic to speak of the exclusive sovereignty of states and, in our case, of the preservation of the sovereignty of the Spanish people when the latter have been excluded, for example, from deciding on constitutional reforms of such huge scope as the reform of the much-criticized article 135 of the Constitution – which annulled the social character of the “social and democratic rule of law” established by that same fundamental law. In reality, unfortunately, there is one area in which that exclusive state sovereignty is exercised, and in an increasingly more repressive form, as we see in the Mediterranean: the border controls imposed on the free movement of persons even while barriers to the entry and flight of capital continue to be eliminated.

In this regard, and to be brief, I take the liberty of quoting what I wrote recently in *Le Monde Diplomatique*: [3]

“In today’s world, moreover, although the sovereign state paradigm continues to exist, we know that we are actually in an increasingly interdependent world on all levels, as well as a hierarchical system of states, in turn merged with major economic powers that seek to impose their interests and decisions over and above the peoples and even their representative institutions. We should not be surprised, therefore, at the rise of popular-based sovereignty movements in very different places on the planet and with quite distinct ideological orientations.”

“In what concerns us here, it should be recalled that we have arrived at this point after a long process in which most states, especially since the end of the 18th century, have tended to develop a model of nationalization of their respective populations based on the promotion of a single national identity, a single language and a single culture. This paradigm, according to which access to citizenship rights is linked to belonging – voluntarily or by force – to the official national identity, has generated many relationships of inequality and injustice, due to the lack of recognition of the different ethnic and national identities within the same State.”

That is the crux of the matter and that is why the claim to the right of self-determination within demo-liberal states of the North has resurfaced. The old salt-water theory, which was intended to limit that right to colonies and occupied countries, has long since lost its applicability. That is why the internal and external dimensions of the right to self-determination are seen in cases such as that of Canada and Quebec, challenging the taboo of the “territorial integrity of states.”

Yet notwithstanding this persistent and ever-increasing reality in different places, the Supreme Court clings to the thesis of “the safeguarding of the territorial integrity of the already constituted states as the natural limit to what has been called the external dimension of the right to self-determination.” Aware, however, that this “territorial integrity” has been questioned in the aforementioned cases, it excuses itself by saying that “we cannot go beyond our functional space” only to do so later by rejecting any similarity between the case of Quebec and that of Canada, since “no similarity can be proclaimed between the historical origin of Quebec’s claim and the unilateral act of secession attributed to the defendants.”

Why not? Hasn’t there been a problem of accommodation, both in Quebec and in Catalonia, of their national realities within the respective states? Yes, there is a difference, of course, but it is that while in Canada that conflict was addressed after two referendums, and a political and democratic solution has been sought despite the fact that its Constitution does not recognize the right of

secession, in the Spanish state there has been no willingness to find that democratic solution. On the contrary, from the first moment a fundamentalist reading of the 1978 Constitution has been imposed making it a true straitjacket - which is what the Canadian Supreme Court judgment on Quebec secession [4] rejected.

Then the SC makes a quick and superficial tour of other cases: Montenegro (“a previously constitutionalized process”), Scotland (“result of a negotiation process” and with the particular feature that the UK constitution is unwritten), or Kosovo (for the unique nature of the conflict and the EU tutelage). Interestingly, with respect to the latter, the Court passes very quickly over the Advisory Opinion of the International Court of Justice (ICJ), forgetting that while it recognizes the specificity of the case, that does not stop it from extracting some general conclusions, among them that while international law does not recognize the right to secession within existing states, it does not prohibit it either. In order to recognize it, the ICJ limits itself to demanding some procedural requirements of the collective subject that is prepared to exercise it: the non-use of force, proof that the process seeking a negotiated settlement must be exhausted, and, finally, that a clear majority of the population concerned has declared itself in favour of secession by peaceful means. [5]

Starting, therefore, from the conclusions of the ICJ, the debate should revolve around the question of whether the negotiated settlement process has been exhausted within the framework of the Spanish State. It seems clear that since the de facto annulment of the substance of the Nou Estatut de Autonomia by the Constitutional Court, [6] there has been a widespread feeling in a large sector of Catalan society (of which about 48% vote for independentist parties, but whose real percentage could only be verified in a referendum that turns on this issue), of non-recognition as a people by the Spanish state. That 2010 ruling was understood as a breach of the territorial constitutional agreement of 1978. It is this that helps to explain the rapid rise of independentism over the almost 10 years since then, which is not to deny that other factors of a secondary order may have been an influence. All the more so when there has not been a single alternative proposal since then for a new type of consensual relationship among the parties of the regime other than the application of article 155 [7] and/or the National Security Law.

In these circumstances, and returning to the case of Kosovo, the conclusions of the ICJ should be taken into consideration and the possibility of recognizing the right to secession be accepted [...] that is, to recognize that in the last resort, the negotiation routes have been exhausted and to avoid a stagnation of the conflict, it would be legitimate to respect the right to secession of the population of the affected territorial area (in this case an Autonomous Community) provided that it complies with the democratic procedural requirements. It is precisely around this hypothesis that there is a total absence of references in the Supreme Court ruling.

The final answer of the SC is, therefore, that “there is no such right” and, what is worse, that “there is no democracy outside the rule of law,” thus opposing one principle to another and refusing to recognize, as did the Constitutional Court itself, that there is at least a “political aspiration” to which a political solution should be sought. The logical thing, then, would be to adopt an evolutionary interpretation of rights, as was done, by the way, with the recognition of gay marriage, and to consider, as the ICJ did, that there are extreme situations in which the legitimate exercise of the right to decide prevails over the “safeguarding of the territorial integrity of the already constituted states” and, in our case, of the sacred unity of Spain. [...]

Jaime Pastor (extracts)

P.S.

- SOCIALIST PROJECT. INTERNATIONAL RELATIONS • October 22, 2019:
<https://socialistproject.ca/2019/10/catalan-independence-leaders-sentenced-to-heavy-jail-terms/>

Footnotes

[1] <https://www.greenleft.org.au/content/vindictive-sentence-catalan-leaders-trial-unleashes-tsunami-protest>

[2] <https://www.vientosur.info/spip.php?article15217>

[3] Jaime Pastor, "La cuestión catalana y la disputa por la soberanía," <https://vientosur.info/spip.php?article13844>
Le Monde Diplomatique (Spanish edition), No. 271, p. 3. Available in Viento Sur.

[4] <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>

[5] Iñigo Urrutia, "Territorial Integrity and Self-Determination: The Approach of the International Court of Justice in the Advisory Opinion on Kosovo," REAF-Revista d'Estudis Autònomic i Federals Vol. 16 (2012).
https://works.bepress.com/inigo_urrutia/5/

[6] The 2006 Statute of Autonomy of Catalonia was a law passed by the Catalan legislature, then approved by Spain's parliament and later ratified in a referendum by Catalan voters. Almost immediately, the opposition center-right Popular Party challenged the statute before the Constitutional Court. The court deliberated for the next four years until June 28, 2010 when it struck down 14 of the statute's 223 articles and curtailed another 27. Among other things, the ruling struck down attempts to place the distinctive Catalan language above Spanish in the region; ruled as unconstitutional regional powers over courts and judges; and said: "The interpretation of the references to 'Catalonia as a nation' and to 'the national reality of Catalonia' in the preamble of the Statute of Autonomy of Catalonia have no legal effect." ("The Spanish Court Decision That Sparked the Modern Catalan Independence Movement.") - Tr.
<https://www.theatlantic.com/international/archive/2017/10/catalonia-referendum/541611/>

[7] Article 155 is only two short paragraphs of the 1978 Constitution of Spain. It says that if a regional government "does not comply with the obligations of the Constitution or other laws it imposes, or acts in a way that seriously undermines the interests of Spain," the national government can ask the Senate to vote on the use of the measure. ("What is Article 155 of the 1978 Spanish Constitution?") - Tr.
<https://www.aljazeera.com/news/2017/10/article-155-spanish-constitution-171019100117592.html>