

assemblea

Barcelona, 27 July 2023

Dolors Feliu
President of the Catalan National Assembly
Catalan National Assembly
Marina 315, Barcelona

Ms. Catherine De Bolle
Executive Director of Europol
Europol
P.O. Box 908 50
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Dear Ms De Bolle,

My name is Dolors Feliu, and I am addressing you as the president of the Catalan National Assembly, the largest Catalan civil society pro-independence organization, with almost 100.000 members and sympathizers. The most influential civil society organization in Catalonia in its sphere since its inception in 2012, the Catalan National Assembly has organized 1-million-strong peaceful demonstrations for independence every year up until the beginning of the Covid-19 pandemic, plus hundreds of smaller rallies and political initiatives to support democracy and to denounce Spain's repressive actions against Catalan activists and elected representatives.

The purpose of this letter is to express the deep concern of our organization in the light of part of the content of the report "The European Union (EU) Terrorism Situation and Trend Report (TE-SAT) 2023" referring to the Catalan pro-independence movement. Specifically, we would like to address our worries concerning the section "Ethno-nationalist and separatist terrorism" which states that "in Spain, the Catalan and Basque independence movements are currently the most active and violent within the Spanish separatist scene (page 68)¹. A few pages before, in the section "Left-wing and anarchist terrorism", the document states that "Overlap between left-wing extremists and separatists was noted in the EU. One example is the often unclear delineation between left-wing extremists and separatists in the Basque region and Catalonia in Spain, particularly in terms of motivations of attacks." (page 65)².

The contemporary Catalan independence movement is and has been a peaceful and non-violent one since its inception more than a decade ago, defending the right to self-determination of Catalonia exclusively through democratic means and initiatives that are included within the scope of the rights to freedom of assembly, freedom of expression, and political participation. This peaceful nature was underlined by the Parliamentary

¹The European Union (EU) Terrorism Situation and Trend Report (TE-SAT) 2023
https://www.europol.europa.eu/cms/sites/default/files/documents/Europol_TE-SAT_2023.pdf

²The European Union (EU) Terrorism Situation and Trend Report (TE-SAT) 2023
https://www.europol.europa.eu/cms/sites/default/files/documents/Europol_TE-SAT_2023.pdf

Assembly of the Council of Europe in a resolution approved in June 2021³, where referring to the October 2017 Catalan independence referendum and related events stated that “it is undisputed that none of the [Catalan] politicians [...] called for violence. On the contrary, it is recognized, also by the prosecution, that they called on demonstrators to refrain from any violent acts. Indeed, on several occasions, hundreds of thousands of people demonstrated without any violent incidents”.

As the resolution states, “the prosecution of the politicians who organized the referendum of 1 October 2017 for the crime of rebellion can hardly be based on actual violence. As many observers noted, the mass demonstrations surrounding the referendum were impressively peaceful.” It also expresses concern on the use of novel interpretations such as the notion of “violence without violence” developed by the Spanish prosecution and judiciary, according to which the sheer number of demonstrators exercises “psychological coercion” on the police officers facing them, and the very broad meaning given to the term of “tumultuous uprising” required for the crime of sedition. According to this interpretation, the existence of peaceful demonstrators mobilized to claim the right to self-determination constitutes an inherent threat of violence, “designed to intimidate and overwhelm the authorities”. That means to label as “violent” the mere exercise of the right to freedom of assembly of the Catalans, therefore setting the legal rationale for its criminalization.

In a similar vein, Amnesty International issued a public statement in November 2017, a few weeks after the independence referendum, confirming that there had been no violence exerted by Catalan activists, contradicting the standpoint of the Spanish Prosecutor and Supreme Court who argued that violence existed as a basic element for the pre-trial detention of nine civil and political leaders, their prosecution, trial and prison sentences.⁴

In April 2018, the UN Special Rapporteur on the right to freedom of opinion and expression Mr David Kaye, urged Spanish authorities to refrain from pursuing the criminal charges of rebellion against political figures and protesters in Catalonia, expressing concern for the fact that “charges of rebellion for acts that do not involve violence or incitement to violence may interfere with rights of public protest and dissent”⁵ A few months later, in July 2018, the Higher Regional Court for the State of Schleswig-Holstein in Germany denied the extradition of Catalan president in exile Carles Puigdemont to Spain for charges of rebellion because “acts of violence did not occur”⁶

Labeling activists as terrorists and falsely accusing them of using violence serves the purpose of criminalizing the right to protest and stifles political dissent, therefore undermining rule of law in the EU, as denounced by international organizations such as Fair Trials⁷. The false pretext of violence has been used since 2017 by Spanish authorities to launch a systematic campaign of repression against the Catalan movement

³ “Should politicians be prosecuted for statements made in the exercise of their mandate?”, resolution report, Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, June 2021
<http://assembly.coe.int/LifeRay/JUR/Pdf/TextesProvisoires/2021/20210603-ProsecutionPoliticians-EN.pdf>

⁴ “Spain: Recent developments in Catalonia from 1 October”, Amnesty International, November 2017
<https://www.amnesty.org/en/wp-content/uploads/2021/05/EUR4174732017ENGLISH.pdf>

⁵ *UN expert urges Spain not to pursue criminal charges of rebellion against political figures in Catalonia*, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, April 2018
<https://www.ohchr.org/en/press-releases/2018/04/un-expert-urges-spain-not-pursue-criminal-charges-rebellion-against?LangID=E&NewsID=22928>

⁶ Ruling on the Carles Puigdemont matter, Schleswig-Holstein Higher Regional Court, July 2018
<https://www.schleswig-holstein.de/DE/justiz/gerichte-und-justizbehoerden/OLG/Presse/PI/201806Puigdemontenglisch.html>

⁷ “Call them crazy”: Criminalisation of activists undermines rule of law in the EU”, Fair Trials, March 2023
<https://www.fairtrials.org/articles/case-studies/call-them-crazy/>

for self-determination, including reprisals against 4.200 peaceful activists and representatives⁸, and the imprisonment of nine civil and political leaders. These human rights violations have been denounced by several United Nations Human Rights Special Rapporteurs⁹¹⁰¹¹. International NGOs such as Amnesty International¹² and the World Organization Against Torture¹³ have also raised their voices against this injustice.

In this regard, in its opinion of June 2019 on the imprisoned Catalan leaders, the UN Working Group on Arbitrary Detention (WGAD) stated that the purpose of the criminal charge and the resulting trial of the Catalan civil and political leaders imprisoned was to coerce them on account of the political opinions they had expressed¹⁴. The WGAD also called on the Spanish authorities to immediately release them, award them reparations, and make legislative amendments to harmonize Spanish laws and practices with their international obligations. The Working Group also considered the deprivation of freedom to be arbitrary when it is targeted at repressing members of political groups to silence them in their claim for self-determination.

Similarly, in January 2021 Belgium formally denied Spain's bid to extradite Catalan Minister of Culture in exile Lluís Puig and dismissed the European Arrest Warrant. The Belgian judges believed that, according to the Spanish Law, the Supreme Court was not competent to try him and raised concerns that Puig's presumption of innocence was at risk in Spain¹⁵. The Public Prosecutor at the Brussels Court of Appeal communicated the decision to the Spanish Prosecutor Pablo Llarena in a letter that included a recommendation to investigate whether there is a "risk of violation of fundamental rights."

In August 2022 the UN Human Rights Committee acknowledged that the accusations of violence were used by the Spanish judiciary to ban from office four Members of the Catalan Parliament¹⁶, therefore violating their right to political participation and that of all those citizens they represented, as enshrined in Article 25 of the International Covenant of Civil and Political Rights.

The actual acts of violence occurring in the context of the Catalan struggle for independence, especially unjustified and disproportionate violence by police officers against individuals, have been exerted by Spanish authorities, as acknowledged by several international organizations and NGOs. The violent crackdown on the October 2017 referendum by Spanish police forces caused injuries to 1,066 people, all of whom were peaceful voters. A study by a researcher of the Autonomous University of

⁸ Map of the Violation of Civil and Political Rights in Catalonia, Òmnium Cultural <https://antirepressiva.omnium.cat/en/>

⁹ Spain must respect fundamental rights in response to Catalan referendum, UN rights experts <https://www.ohchr.org/en/press-releases/2017/09/spain-must-respect-fundamental-rights-response-catalan-referendum-un-rights>

¹⁰ A/HRC/43/47/Add.1: Visit to Spain - Report of the Special Rapporteur on minority issues, March 2020

<https://www.ohchr.org/en/documents/country-reports/ahrc4347add1-visit-spain-report-special-rapporteur-minority-issues>

¹¹ *Spain must respect fundamental rights in response to Catalan referendum, UN rights experts*, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Mr. Alfred de Zayas, Independent Expert on the promotion of a democratic and equitable international order.

https://www.elnacional.cat/en/news/un-rapporteur-human-rights-defenders-spain-catalonia_336846_102.html

¹² "Amnesty International again calls for release of activists jailed in Catalan Trial", CatalanNews, November 2020 <https://www.catalannews.com/news/item/amnesty-international-again-calls-for-release-of-activists-jailed-in-catalan-trial>

¹³ "The World Organisation Against Torture calls for the release of two Catalan political prisoners", Vilaweb, November 2018

<https://english.vilaweb.cat/noticies/the-world-organisation-against-torture-calls-for-the-release-of-two-catalan-political-prisoners/>

¹⁴ WGAD Statement 6/2019, June 2019

https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session84/A_HRC_WGAD_2019_6.pdf

¹⁵ "Belgium officially denies Spain's bid to extradite Catalan politician Lluís Puig, CatalanNews", January 2021

<https://www.catalannews.com/society-science/item/belgium-officially-denies-spain-s-bid-to-extradite-catalan-politician-lluis-puig>

¹⁶ UN Human Rights Committee, Judgment on the communication 3297/2019, August 2022

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f135%2fD%2f3297%2f2019&Lang=en

Barcelona¹⁷ showed that 80 percent of the police actions breached the protocol that permits them to inflict one or two baton blows to a person's legs or buttocks, beating citizens above the waist (outside the authorized zone) and putting people's vital organs at risk. These actions were denounced by the Council of Europe Commissioner for Human Rights Nils Muižnieks¹⁸, who raised concerns regarding allegations of disproportionate use of force. International NGOs such as Human Rights Watch also raised their alarm regarding the use of force by Spanish police officers against peaceful voters.¹⁹

Two years later, the massive civic protests that followed the October 2019 sentences to Catalan political and civic leaders from 9 to 13 years in prison were met with unprecedented violence by regular and paramilitary police forces. The Spanish government deployed thousands of police officers in Catalonia, including military police forces: the *Guardia Civil*. According to the Catalan Ministry of Health, over 750 protesters were injured, including 71 journalists, one of which was placed under arrest. The Spanish authorities have not investigated these actions. In many cases, police officers have even received awards, despite the public expression of concern and a subsequent call made by the Council of Europe Commissioner for Human Rights²⁰ Dunja Mijatovic, calling on Spanish authorities to safeguard the rights of those who demonstrate peacefully.

In 2019, international human rights network EuroMed Rights expressed its concern regarding the growth of practices by public authorities in some EU members states that curtail people's ability to protest and express dissent, while protesters and social leaders are frequently persecuted and subject to human rights violations, including those occurring in Catalonia against pro-independence activists²¹. A year earlier, in 2018, Amnesty International denounced the use of counter-terrorism laws by Spanish authorities to restrict freedom of expression, expressing concern for a criminalization that has a general chilling effect and can create an environment where individuals are afraid of making use of their freedom of speech. Something that, according to Amnesty International, poses a longer-term threat to the strength of civil society and the ability to ensure not only the right to freedom of expression, but also the defense of a whole range of other fundamental human rights²².

Despite these alarming facts and trends, and the many expressions of concern, Spanish authorities keep on criminalizing the Catalan democratic pro-independence movement by labeling it as terrorist, as the 2022 Annual report of the Spanish Attorney General shows (page 429).²³ This is a practice common among authoritarian states to suppress the political dissent by national minorities, such as the Russian Federation in dealing with the Crimean Tatars or the People's Republic of China with the Uygur people. In the case of Spain and the Catalans, the criminalization of an entire democratic movement has been instrumental to further justify repressive actions and human rights violations, such

¹⁷ Estadística descriptiva de las personas atendidas por el Servei Català de la Salut a consecuencia de las cargas policiales del día del Referéndum de Autodeterminación de Cataluña, el 1 de octubre de 2017, Núria Pujol-Moix, February 2019 <https://imatges.vilaweb.cat/nacional/wp-content/uploads/2019/02/Estadistica-1-octubre-NPM-CAS.pdf>

¹⁸ Commissioner calls on Spain to investigate allegations of disproportionate use of police force in Catalonia, Commissioner for Human Rights of the Council of Europe, October 2019 <https://www.coe.int/en/web/commissioner/-/commissioner-calls-on-spain-to-investigate-allegations-of-disproportionate-use-of-police-force-in-catalonia>

¹⁹ <https://www.hrw.org/news/2017/10/12/spain-police-used-excessive-force-catalonia>

²⁰ Protection of the rights to freedom of expression and peaceful assembly during last week's demonstrations in Catalonia, Commissioner for Human Rights of the Council of Europe, October 2017 <https://www.coe.int/en/web/commissioner/-/protection-of-the-rights-to-freedom-of-expression-and-peaceful-assembly-during-last-week-s-demonstrations-in-catalonia>

²¹ "Curbing the Space for Civic Engagement", EuroMed rights report, October 2019 <https://euromedrights.org/wp-content/uploads/2020/12/Curbing-the-space-EN-FINAL-1.pdf>

²² "Spain: Tweet... if you dare: How counter-terrorism laws restrict freedom of expression in Spain", Amnesty International report, March 2018 <https://www.amnesty.org/en/documents/eur41/7924/2018/en/>

²³ 2022 Annual report of the Spanish Attorney General https://www.fiscal.es/memorias/memoria2022/FISCALIA_SITE/recursos/pdf/MEMFIS22.pdf

as the jailing of two of my predecessors as presidents of the Catalan National Assembly, Jordi Sànchez and Carme Forcadell, or the illegal espionage using the spyware Pegasus of dozens of Catalan activists and political representatives since 2015, actions that have been denounced by UN Human Rights special rapporteurs²⁴, the European Parliament²⁵, and Amnesty International²⁶, which among other institutions and international NGOs called for them to be investigated. Five of the activists spied on are members of the organization I represent, including former presidents Elisenda Paluzie and Jordi Sànchez²⁷.

By describing the Catalan pro-independence movement as violent and including it in a report focusing on terrorist threats, Europol is contributing to the criminalization of a pacific, legitimate, and democratic self-determination movement. This poses a serious threat to democracy, endangers the fundamental rights of freedom of expression (article 11 of the Charter of Fundamental Rights of the EU) and of peaceful assembly and association (article 12), and indeed creates a chilling effect that may prevent other citizens from exercising their legitimate rights, including the tens of thousands of members and sympathizers of the Catalan National Assembly, who feel totally unprotected by EU authorities. It also undermines Article 21 of the Charter, which forbids discrimination on grounds of membership of a national minority and political opinion, among others.

I would like to underline that Article 2.1 of the statute of the Catalan National Assembly establishes that its goals are:

- a) To peacefully promote the creation of the political and social conditions necessary for the achievement and constitution of the independent, legal, social and democratic Catalan state.
- b) To bring together all the people who work or who want to work with similar objectives to those of the Catalan National Assembly, either individually or from all kinds of groups, entities, movements and political parties.
- c) To facilitate, promote and host all types of democratic and peaceful initiatives aimed at achieving the objectives mentioned in the previous sections.

For this reason, as the biggest and most representative pro-independence organization in Catalonia, and as such, directly affected by the content made public in the “The European Union (EU) Terrorism Situation and Trend Report (TE-SAT) 2023”, we address you as Executive Director of Europol, requesting access to the information and documents provided by Spanish authorities that supposedly connect the Catalan pro-independence movement with terrorism.

24 “Spain: UN experts demand investigation into alleged spying programme targeting Catalan leaders”, [UN Special Rapporteur on Minority Issues, UN Special Rapporteur on freedom of peaceful assembly and of association, UN Special Rapporteur on freedom of opinion and expression](https://www.ohchr.org/en/press-releases/2023/02/spain-un-experts-demand-investigation-alleged-spying-programme-targeting), February 2023 <https://www.ohchr.org/en/press-releases/2023/02/spain-un-experts-demand-investigation-alleged-spying-programme-targeting>

25 Spyware: MEPs sound alarm on threat to democracy and demand reforms, European Parliament, May 2023 <https://www.europarl.europa.eu/news/en/press-room/20230505IPR84901/spyware-meps-sound-alarm-on-threat-to-democracy-and-demand-reforms>

26 “Spain: EU must act to end spyware abuse after prominent Catalans targeted with Pegasus”, Amnesty International, April 2022 <https://www.amnesty.org/en/latest/news/2022/04/spain-pegasus-spyware-catalans-targeted/>

27 “Spain’s Massive Espionage on Catalan Activists and Representatives”, Assemblée Nacional Catalana <https://assemblea.cat/catalangate-en/>

According to remarks made by Europol's Deputy Executive Director Mr. Jean-Philippe Lecouffee, on June 28th, to the LIBE Committee of the European Parliament²⁸, the data published in the abovementioned report is provided by European governments, but the European agency "checks its veracity". For this reason, we also wish to know what mechanisms and processes have been used to verify these accusations. Last, and most importantly, we wish to formally request the withdrawal of the mentioned criminalizing content from the official version of the report, and to request its non-inclusion in future versions of the report in the forthcoming years.

In case these requests are rejected, we reserve the right to undertake further institutional measures.

Many thanks for your attention,

A handwritten signature in blue ink, consisting of a large, stylized 'D' followed by a horizontal line and a small flourish.

Dolors Feliu
President
Catalan National Assembly

28 Europol Deputy Executive Director Mr. Jean-Philippe Lecouffee statement to the LIBE Committee of the European Parliament, June 2023 https://twitter.com/assemblea_int/status/1674692416685703170