



Report on the Views Adopted by the UN Human Rights Committee on Communication No. 3297/2019

1. Summary

On its Views of July 2022, the UN Human Rights Committee (“the Committee”), a body of 17 independent experts that monitors compliance with the International Covenant on Civil and Political Rights, found that Spain violated Article 25 of the International Covenant on Civil and Political Rights (concerning the rights of political participation) by suspending, prior to any conviction, the political rights of Mr.Oriol Junqueras i Vies; Mr.Raül Romeva i Rueda; Mr.Josep Rull i Andreu; and Mr.Jordi Turull i Negre (all of them members of the Government of Catalonia removed from office by the Spanish Government in October 2017). In its Views, the Committee has also urged Spain to explain, within six months, the measures it intends to implement to remedy the caused damage.

The Committee’s Views were taken in response to the communication submitted in December 2018 by the above-mentioned individuals (the petitioners). The Views were adopted by the Committee on 12 July 2022,¹and were made public on 31 August..

2. Principal Argument

The petitioners’ principal argument was that the suspension of their political rights, prior to a conviction, violated Article 25 of the International Covenant on Civil and Political Rights signed by the Spanish State in 1985.

This article guarantees the rights to “take part in the conduct of public affairs, directly or through freely chosen representatives” and “to vote and be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the elector”. These rights are guaranteed “without unreasonable restrictions”.

In similar terms, Article 23.1 of the Spanish Constitution states that citizens have the right to “participate in public affairs, directly or through representatives freely elected in periodic elections by universal suffrage”.

¹ The voting of the Views recorded one abstention and two dissenting voices.



The petitioners alleged that under Article 25 of the Covenant, their political rights cannot be suspended or denied except **for reasons provided for in law**, which must be **reasonable and objective** and must be adopted through fair and equitable procedures. However, in their case, the suspension: “(a) was not based on reasonable and objective grounds provided for by law”; (b) was arbitrary, as it “must be applied based on an individualized assessment”; (c) was not carried out under guarantees of due process and fairness.

Spain, for its part, based its argument on the fact that the **suspension of political posts is provided for in Article 384 bis of the Criminal Procedure Act for the crime of rebellion** and, therefore, understands that it was a reasonable and objective, individualised and proportional measure, in so far as this was the crime with which they were initially charged, although it points out that the vice-president and councillors were eventually convicted for sedition as the use of violence was not proven. The suspension was finally lifted by the Supreme Court’s ruling on the case on 14 October 2019.

3. Decision of the Views on the legal merits

The Views analyse the legal merits of the case on the bases of the above arguments and contain an initial assertion that **Article 25 of the Covenant is the essence of democratic government** (paragraph 8.3). The Views also underline the connection between the right of participation and freedom of expression and assembly.

Restriction of this right must therefore meet strict requirements:

(a) **Predictability**, i.e. it must be formulated with sufficient precision to enable a person to regulate his or her conduct accordingly and it cannot confer unlimited or general discretion on those charged with its application.

(b) **Proportionality**: If the grounds for suspension of the right to vote and stand for elected office is conviction for a criminal offence, this restriction must be proportionate to the offence and the conviction.

(c) **Non-arbitrariness**: Where the conviction is clearly arbitrary or amounts to a manifest error or denial of justice, or the judicial proceedings leading to the conviction violate the right to due process, the restriction of the rights in Article 25 may become arbitrary.

(d) **Reasonableness and objectivity**: The Committee also notes that the guarantees of Article 25 must be applied with greater zeal when the restriction of rights comes prior, rather than subsequent to, conviction for a crime. The Committee must then determine whether the suspension of functions was imposed against the defendants based on reasonable and objective grounds provided for by law.

Secondly, the Committee’s analysis of the concurrence of violence in the petitioners’ actions is important. In this regard, the Committee reiterates that there is a presumption in favour of considering assemblies as peaceful, and that isolated acts of violence by some participants should not be attributed to others, to the organisers or to the assembly as such.



Accordingly, and having rejected the arguments put forward by Spain in favour of the inadmissibility or dismissal of the case, the Committee's Views concluded by pointing out that Spain did not demonstrate that the Spanish Supreme Court's implementation of Article 472 of the Spanish Criminal Code, and 384 bis of the Criminal Procedure Act, complied with the requirement of **foreseeability** demanded in Article 25 of the Covenant.

In addition, the Committee understood that the application of domestic law that automatically results in the suspension of the functions of elected officials, for alleged crimes based on public and peaceful acts, and prior to the existence of any conviction, prevents an individual analysis of the proportionality of the measure and cannot, therefore, be considered to comply with the requirements of **reasonableness and objectivity** as demanded.

The Committee thus concludes **that under article 25 of the Covenant, Spain committed an abuse of law and violated the rights of those convicted**, insofar as the decision to charge them with the crime of rebellion, which automatically entailed the suspension of their pre-conviction public functions, was not based on reasonable and objective grounds provided for by law.

Regarding full redress of the damage, point 10 considers that the Views on the merits of the claim **constitute sufficient reparation, although Spain has the obligation to take all necessary measures to prevent similar violations in the future.**

Finally, in point 11, **the Committee urges Spain to inform the Committee within 180 days of the measures it has taken to implement the Views and requests that Spain publishes them and disseminates them widely.**

4. Assessment

The Views constitute a valuable legal argument, to be taken into account in the interpretation of Article 25 of the International Covenant on Civil and Political Rights, as they set out very clearly the requirements for its restriction.

The Views of the Committee represent an authoritative determination by the body established under the Covenant itself, charged with the interpretation of that instrument. States have a duty to cooperate in good faith in the implementation of the Committee's views and should use all means within their competence to implement the Committee's Views. Moreover, the content and conclusions of these opinions have a strong influence on other high courts such as the European Court of Human Rights (ECHR) and as the Court of Justice of the EU (CJEU). In this regard, there is currently an appeal pending before the CJEU by Mr. Carles Puigdemont, in relation to his immunity as a Member of the European Parliament, and several applications to the ECHR, submitted by other removed members of the Government of Catalonia, the rulings of which may have direct legal consequences for Spain.

In addition, it should also be borne in mind that Spain is a party to the Covenant since 1985 and has also signed the Optional Protocol, in accordance with Article 2 of the



Covenant. Therefore, Spain has undertaken to guarantee the rights provided for in the Covenant to all individuals within its territory and subject to its jurisdiction, as is the case of the claimants, as well as **ensure effective and legally enforceable redress when a violation is proven**, as established in the Views.

Consequently, given the content of the Views, one could argue that Spain's political and legal commitment to the Covenant could be articulated through a variety of measures:

1. First, as the UN Human Rights Committee calls on Spain, the latter should publish the Views and disseminate them widely.
2. Secondly, as urged in the Views, Spain report to the Committee within 180 days, the feedback regarding the measures taken to implement the Committee's Views.
3. Among these measures, it seems absolutely necessary to repeal, or at least amend, Article 384 bis of the Spanish Criminal Procedure Act (which implies the automatic suspension from public duties, once prosecution has been determined and pre-trial detention has been ordered for crimes committed by persons belonging to or related to armed gangs or terrorist or rebel individuals). This measure could also be accompanied with the repeal or amendment of other regulations related to Article 384 bis or the amendment of which is considered necessary to redress the damage caused and, in particular, to avoid its repetition in the future.
4. Likewise, Spain may consider adequate to articulate a procedural mechanism allowing for compliance with and execution of the UN Human Rights Committee's Views. Among the different possibilities, making possible to appeal before the Supreme Court would help to redress the damage caused, together with the adoption of the necessary measures for the execution of the Views that establish the violation of the rights enshrined in the International Covenant on Civil and Political Rights.
5. In addition to the above-mentioned, Spain could activate other measures of redress, which although not required by the Views, could contribute to redressing the violation of rights the Views clearly established.

Barcelona, 5 September 2022